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MACKENZIE VALLEY PIPELINE INQUIRY

Government
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF

- (a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS CROWN LANDS WITHIN THE YUKON TERRITORY AND THE NORTHWEST TERRITORIES, and
- (b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS CROWN LANDS WITHIN THE NORTHWEST TERRITORIES

FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION, OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE PROPOSED PIPELINE

(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.

October 12, 1976.

PROCEEDINGS AT INQUIRY

Volume 196

APPEARANCES:

Mr. Ian G. Scott, Q.C.,
Mr. Stephen T. Goudge,
Mr. Alick Ryder, and
Mr. Ian Roland, for Mackenzie Valley Pipeline Inquiry;
Mr. Pierre Genest, Q.C.,
Mr. Jack Marshall,
Mr. Darryl Carter,
Mr. J.T. Steeves, and for Canadian Arctic Gas Pipeline Limited;
Mr. Gerry Ziskrout,
Mr. Reginald Gibbs, Q.C.,
Mr. Alan Hollingworth,
Mr. John W. Lutes, and for Foothills Pipe Lines Ltd.;
Mr. Ian MacLachlan,
Mr. Russell Anthony,
Prof. Alastair Lucas and
Mr. Garth Evans, for Canadian Arctic Resources Committee;
Mr. Glen W. Bell and
Mr. Gerry Sutton, for Northwest Territories Indian Brotherhood, and Metis Association of the Northwest Territories;
Mr. John Bayly and
Miss Lesley Lane, for Inuit Tapirisat of Canada, and The Committee for Original Peoples Entitlement;
Mr. Ron Veale and
Mr. Allen Lueck, for The Council for the Yukon Indians;
Mr. Carson Templeton, for Environment Protection Board;
Mr. David H. Searle, Q.C., for Northwest Territories Chamber of Commerce;
Mr. Murray Sigler and
Mr. David Reesor, for The Association of Municipalities;
Mr. John Ballem, Q.C., for Producer Companies (Imperial, Shell & Gulf);
Mrs. Joanne MacQuarrie, for Mental Health Association of the Northwest Territories.

CANADIAN ARCTIC
GAS STUDY LTD.
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347
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Vol. 196

I N D E XPage

WITNESSES FOR CANADIAN ARCTIC GAS STUDY LIMITED:

Dr. Andrew R. THOMPSON

William Gordon MacLEOD

Einar SKINNARLAND

- In Chief

30766

- Cross-Examination by Mr. Bayly

30886

- Cross-Examination by Mr. MacLachlan

30908

- Cross-Examination by Mr. Steeves

30912

- Cross-Examination by Mr. Scott

30928

EXHIBITS:

858 Letter from Dr. Bliss re Delta Route
Evaluation, October 6, 1976

30808

859 Letter from Dr. Geist re Comments by
Jakimchuk, May 25, 1967

30808

860 Report by Dr. Williams re Frost Heave

30808

861 Response to Dr. Williams' Report by N.E.S.
June 1976

30808

862 Qualifications & Evidence of E. Skinnarland

30808

863 Brief on Authorities & Procedures for
Implementation of Stipulations for M.V.P. by
E. Skinnarland, October 1976

30808

864 Organization Chart, Pipeline Authority

30809

865 Qualifications & Evidence of W.G. MacLeod

30809

866 Qualifications & Evidence of Dr. A.R. Thompson

30809

867 "Water Regulation in Canadian North" by
W.G. MacLeod, July 1975

30847

1 Yellowknife, N.W.T.

2 October 12, 1976.

3 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

4 THE COMMISSIONER: We'll
5 come to order, ladies and gentlemen. My apologies;
6 we just had a short staff meeting.

7 Well, are we all set to go?

8 MR. SCOTT: Yes, Mr.

9 Commissioner. Could I make a -- file a few documents?
10 First of all, Dr. Bliss who you will recall gave
11 evidence on two occasions, has written to us with
12 respect to his comparison between the coastal and
13 the interior gas pipeline routes, as has Dr. Thompson,
14 who was on the same panel with him, and I wonder if
15 I could tender as the next exhibit his letter to
16 Mr. Waddell dated October 6, 1976 with the appendices
17 which are his detailed comments? I have copies
18 of that for my friends.

19 The next item is a letter
20 from Dr. Valerius Geist, who didn't give evidence but
21 whose paper was filed as an exhibit about his paper
22 and the comments on it that were made by Mr. Jakimchuk
23 for Arctic Gas. That letter is to me and is dated
24 May 25 of 1976, though in fact it was not received,
25 I gather, until fairly recently, and that should be
26 made the next exhibit. I have copies of that for
27 the participants, if they would like to have them.

28 The next item is a report
29 that was prepared for Commission counsel and which
30 was circulated some months ago by Dr. Williams on

1 the frost heave question, and I would ask that that
2 be made the next exhibit.

3 I think if Mr. Steeves would
4 /it would be useful
5 permit, to file following it a document prepared for
6 Canadian Arctic Gas Study Limited, being a response to
7 Dr. Williams' report and dated June of 1976. That
8 exhibit was circulated as well some months ago.
9 They were not made exhibits at that time because it
10 was thought that there might be more evidence called
11 with respect to that matter, but perhaps it would
12 be useful now to have them both marked as exhibits.

13 Those are all the documents,
14 sir, I would like to tender at this time, and if
15 no one else has any comments, Mr. Evans, I think we're
16 ready.

17 MR. EVANS: Thank you, Mr.
18 Scott.

19 MR. BAYLY: May I interrupt,
20 Mr. Commissioner, and say on the record that I have
21 distributed and filed the evidence of Mr. Beakhust,
22 who will be giving evidence on Friday, and I will
23 be giving out the evidence of Mr. Zamanski when I
24 receive it. I haven't got it yet.

25 THE COMMISSIONER: On what
26 subject?

27 MR. BAYLY: This is on
28 regulations and enforcement of regulations.

29 THE COMMISSIONER: Well, they
30 may have the honor of being the last witnesses of
the Inquiry.

Thompson, MacLeod, Skinnarland
In Chief

1 MR. BAYLY: We sort of
2 designed it that way, sir.

3 THE COMMISSIONER: Pardon?

4 MR. BAYLY: We hoped it
5 would happen that way, yes , unless Mr. Scott is
6 going to call anyone after that.

7 MR. EVANS: Mr. Commissioner,
8 you have before you a panel of three witnesses called
9 by Canadian Arctic Resources Committee, and they are
10 from right to left: Mr. Einar Skinnarland, Mr.
11 William MacLeod, and Dr. Andrew Thompson.

12
13 ANDREW R. THOMPSON, resumed:

14 WILLIAM GORDON MACLEOD,

15 EINAR SKINNARLAND, sworn:

16 DIRECT EXAMINATION BY MR. EVANS:

17 Q I'd like to begin
18 with Mr Skinnarland's testimony. Also there are
19 two exhibits, which I wish to file through Mr.
20 Skinnarland. One is his report to CARC on this
21 matter dated October 1976, that's the yellow folder,
22 and if that could be made the next exhibit; and the
23 other is a plan for an implementation authority which
24 is a mimeographed sheet of paper. I'd like to draw
25 your attention specifically to the change made in
26 pen, and that's a plan that was drawn jointly by
27 Mr. Skinnarland and Dr. Thompson.

28 With respect to Mr.
29 Skinnarland's evidence, he begins with a series of
30 definitions which I have included in his written

Thompson, MacLeod, Skinnarland
In Chief

1 testimony merely as explanatory, right there at the
2 beginning, and I would like to refer you to his
3 qualifications, which are the last two pages.

4 Now, Mr. Skinnarland, would
5 you please describe to the Commissioner your technical
6 background?

7 WITNESS SKINNARLAND: Do I
8 have to turn this on?

9 Q No, it's already on.

10 A My education is in
11 civil engineering, and I have some 30 years of
12 experience in construction engineering, and manage-
13 ment, principally in United States and Canada, but
14 also in several other countries of the world, including
15 three years in India.. From 1965 to 1972 I worked
16 for the Foundation Company of Canada, where my final
17 position was vice-president and general manager of
18 construction.

Thompson, MacLeod, Skinnarland
In Chief

1 From 1967 until I left the
2 Foundation group or companies, I was also a director
3 of the Foundation Company of Canada and many of its
4 subsidiary companies.

5 During this period, the
6 Foundation group or companies carried out some
7 \$100,000,000.00 of engineering and construction a
8 year ranging from resource developments in the North
9 to major engineering construction and building
10 construction across Canada.

11 A brief resume of my experience,
12 education and professional affiliation is appended to
13 the brief, submitted to the Inquiry.

14 Q Mr. Skinnarland, what
15 is your present occupation?

16 A I'm president of Terminus
17 Limited, a firm I organized some three years ago to
18 furnish consulting services in the construction
19 engineering field with emphasis on broader evaluation
20 and better long-range solutions to conflicts arising
21 between the developers, government agencies and
22 environmental interest groups, particularly in connection
23 with resource developments in the North.

24 Q What kind of direct
25 involvement have you had in the supervision of large
26 engineering projects?

27 A Until I left the
28 Foundation company some three years ago, I have spent
29 almost my entire life in connection with large
30 engineering projects. First, I spent some ten years

Thompson, MacLeod, Skinnarland
In Chief

1 working on projects in various positions, from
2 superintendent to project engineer, to project manager,
3 terminating with the Robert Moses Power Plant on the
4 St. Lawrence River.

5 While with the Foundation
6 Company I was in responsible charge for major contracts
7 such as Arrow Dam on the Columbia River, two contracts
8 on the Portage Mountain Hydro Electric Development,
9 the design and construction of the Asbestos Hill
10 Project on the Hudson Straits, the design and con-
11 struction of the Golden Eagle Tanker Dock in Quebec
12 City and a number of industrial projects, ranging from
13 mining to pulp and paper and manufacturing.

14 Q Mr. Skinnarland, I am
15 informed that you were retained by the Cree Indians
16 as an advisor on aspects of the James Bay Hydro
17 Electric Project. Would you briefly describe your
18 involvement in the resulting judicial proceedings
19 and in the negotiations of the final settlement.

20 A I originally was
21 requested to appear as an expert witness in the court
22 case to describe the physical changes the project would
23 cause in the James Bay-Ungava Bay area. Also, to give
24 evidence regarding costs of construction of this
25 project. This engagement was a joint undertaking for
26 the James Bay Cree and the Inuits of northern Quebec.

27 Subsequently, when the native
28 people obtained the interrogatory injunction and
29 Quebec submitted an offer to the native people for a
30 settlement, I was requested to handle the technical

Thompson, MacLeod, Skinnarland
In Chief

1 negotiations on behalf of the James Bay Cree, principally
2 with the James Bay Energy Corporation regarding
3 modifications of the project intended to reduce the
4 impact on the Cree Indians' way of life.

5 This technical negotiation
6 assignment was expanded to cover financial aspects and
7 are continued as the principal negotiating in these
8 fields as well as general consultants from business
9 aspects, for both the agreement in principal and the
10 final agreement. I have continued as general con-
11 sultant to the Crees during the transitional period
12 again with emphasis on the relations between the Cree
13 Indians and the James Bay Energy Corporation and on
14 the financial aspects including the formation of the
15 legal entities required to implement the agreement.

16 Q I understand that you
17 have also been involved in the Trans-Alaska Pipeline
18 Project. Would you please outline to the Commissioner
19 what your role was in that project?

20 A When the Department of
21 Interior in late 1973 requested proposals for the
22 services of a third party contractor to assist the
23 authorized officer of the Alaska Pipeline Office, to
24 implement the technical and administrative aspects of
25 the stipulations, forming part of the right-of-way
26 agreement, I was requested by Mechanics Research
27 Incorporated of Los Angeles to serve as their consultant
28 on Arctic and remote area aspects regarding construction.

29 In this connection, I worked
30 with Machanics Research in preparing the successful

Thompson, MacLeod, Skinnarland
In Chief

1 proposal and subsequently served as the senior con-
2 sultant on Arctic and construction problems related
3 to the implementation of the stipulation. I have
4 visited the Alaska Pipeline Project several times and
5 I have travelled from Valdez along the entire pipeline
6 alignment to Prudhoe Bay. I'm still retained as
7 consultant but my assignment is essentially completed.

8 Q In your opinion, can
9 the experience gained from the Alaska Oil Pipeline
10 be used to predict impact during construction of a
11 Mackenzie Valley Gas Pipeline?

12 A Yes, I believe it can.
13 There is little difference between an oil and a gas
14 pipeline in terms of construction logistics and
15 potential impact during the construction. Because of
16 that fact, the experience with the Alaska Oil
17 Pipeline can be used to predict impacts of the Mackenzie
18 Gas Pipeline and can indicate how to develop more viable
19 implementation procedures for environmental impact
20 abatement.
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Thompson, MacLeod, Skinnarland
In Chief

1 Q In terms of social and
2 environmental considerations, what aspect of construc-
3 tion has the greatest potential impact?

4 A It is in particular, the
5 construction of access roads, logistics facilities, such
6 as staging depots, airstrips, camps and the operation
7 of these facilities which causes the most important
8 social and economic pressures and the ^{greatest} disturbance
9 of and damage to the fauna. In these respects,
10 the tonnages of material, equipment and the require-
11 ments for manpower are not appreciably different for
12 similar/oil and gas pipelines traversing Arctic terrain.
diameter

13 Q Would you please describe
14 the
/arrangements made between the U.S. Government, the
15 Government of the State of Alaska and the pipeline
16 consortium to set the stage for construction of the
17 Alaska Pipeline?

18 A On January 23rd, 1974,
19 an agreement was entered into, between the United
20 States of America acting through the Secretary of In-
21 terior and the seven companies which had applied for
22 a permit to build the Alaska Oil Pipeline. The grant-
23 ing the companies a right-of-way to construct the
24 pipeline from Prudhoe Bay to Valdez. Forming part of
25 this agreement were data submitted with the applica-
26 tion such as drawing showing the general route, the
27 design of the pipeline, environmental considerations
28 included in the routing and the design, requirements
29 regarding the Department of Defence installations in
30 the area traversed by the pipeline, requirements of the

Thompson, MacLeod, Skinnarland
In Chief

1 Federal Power Commission relating to hydro electric
2 power sites, a co-operative agreement between the
3 United States Department of Interior and the State of
4 Alaska regarding the pipeline and finally, the stipu-
5 lations for the agreement and the grant of right-of-way
6 for the Alaska Oil Pipeline.

7 The most significant part of
8 the agreement besides the general clauses for granting
9 a right-of-way were the stipulations attached to the
10 agreement. These stipulations in addition to administ-
11 rative provisions which describe in detail the en-
12 vironmental restrictions in the broader sense applying
13 to the construction and operation of the pipeline.
14 These stipulations by and ^{large} / are the regulations
15 arising out of the statement of intent in the agreement.
16 The regulations are quoted in my report appended to the
17 prepared version of my testimony.

18 Q Were there any particular
19 problems in implementation of the pipeline stipulations
20 for the Alaska Oil Pipeline, which in your opinion would
21 not apply to the Mackenzie Valley Gas Pipeline?

22 A There is the matter of
23 split jurisdiction over land and the renewable re-
24 sources. It was handled by a co-operative agreement
25 between the United States Department of Interior and
26 the State of Alaska. It states, that each of the
27 parties has jurisdiction of the respective land, namely
28 federal over federal and state over state and private
29 land. For practical purposes, the entire pipeline runs
30 across state and federal land with the exception of the

Thompson, MacLeod, Skinnerland
In Chief

1 Valdez Harbour area which is municipal land. The co-
2 operative agreement provides for a separate federal and
3 state implementation organization and field surveillance
4 team for the implementation of the stipulations. How-
5 ever, under other federal regulations the integrity of
6 the pipeline system is a matter of federal concern and
7 thus, the Department of Interior has overriding authority
8 regarding the design of the pipeline and its contiguous
9 facilities.

10 The permittees also had to
11 comply with normal regulations such as having to obtain
12 permits to cross navigable rivers from the Corps
13 of engineers and they had to comply with coastguard
14 regulations for the operation of harbours.

15 Q In your opinion how im-
16 portant was the split jurisdiction between federal and
17 state agencies in the implementation of the pipeline
18 stipulations?

19 A I consider that it was
20 and still is one of the main difficulties affecting
21 efficient implementation of the Alaska Oil Pipeline
22 stipulations.

23 Q Would you please describe
24 the principle features of the implementation of pipe-
25 line stipulations by the U. S. Federal Government?

26 A The principle feature
27 was the recognition that a single authority would be
28 the most effective means of implementing the stipula-
29 tions. During the long period between the original
30 start on the pipeline in 1969, and the final granting of

Thompson, MacLeod, Skinnarland
In Chief

1 the right-of-way, the involved federal agencies studies
2 ways for carrying out their respective responsibilities
3 when the Alaska Oil Pipeline would be approved. These
4 studies lead to the completion that no single agency
5 within the U. S. Government had inhouse sufficient
6 administrative, scientific and technical expertise to
7 implement all the requirements which would form part
8 of the agreement.

9 The Alaska Pipeline office had
10 been organized during the original phase to construct
11 a pipeline but function with a skeleton staff only.
12 The use of the Corps A engineer as agent for the
13 implementation aspects was considered but even this
14 group with this long and massive experience in eng-
15 ineering works did not have inhouse expertise regard-
16 ing pipeline design and environmental issues as re-
17 quired to implement the stipulations. Further, being
18 a U. S. Government agency, its rigid statutory pro-
19 cedures would make efficient implementation difficult
20 under the anticipated fast moving activities of the
21 pipeline construction. The ultimate conclusion of the
22 federal authorities was, that a third party contract
23 to handle administrative, scientific and technical
24 aspects of the implementation under an authorized
25 officer assigned to the Alaska Pipeline office would
26 best serve the anticipated needs. The Department of
27 Interior would continue to administer the Alaska Pipe-
28 line office since it was the agency with a principle
29 mandate.
30

Thompson, MacLeod, Skinnarland
In Chief

1 Q How did the Federal
2 Government go about selecting the third party
3 contractors?

4 A In August of 1973 the
5 Department of Interior through the Bureau of Land
6 Management, advised potential contractors that they
7 intended to request proposals for an administrative,
8 scientific, technical third party contract to assist
9 the authorized officers and the Alaska Pipeline office
10 in implementing the requirements of the stipulations
11 Grant of
12 forming part of the agreement and/right-of-way for the
13 Alaska oil Pipeline. This request for a proposal
14 outlined in detail the steps the Department of Interior
15 intended to go through before selecting the third
16 party contractor.

17 Without going into details,
18 of the selection procedure, it should be of interest
19 that the list of proposers, including the Boeing
20 Aerospace group, Kaiser Engineering, and several of
21 the largest engineering firms in the United States,
22 and one engineering group each from Canada, United
23 Kingdom, and France. The firm selected, namely,
24 Mechanics Research Incorporated of Los Angeles,
25 had considerable experience in monitoring and evaluation
26 of government contracts, and had by sub-contract added
27 expertise in pipeline engineering and construction.
28 The Gulf Interstate Engineering Company of Houston,
29 Texas, and Environmental Sciences through Ecology and
30 Environment Incorporated of Buffalo, New York.

The principal factors in

Thompson, MacLeod, Skinnarland
In Chief

1 selecting -- in the selection process, besides scientific
2 and technical expertise, was flexibility in administra-
3 tive concept while working with the government agency
4 and no conflict of interest.

5 Q Would you please describe
6 the working relationship between the Alaska Pipeline
7 office and the third party contractor?

8 A The authorized officer
9 is a person who has been designated by the secretary
10 of the Department of Interior to represent him regarding
11 the implementation of the agreement granting the right-
12 of-way for the construction of the Alaska Oil Pipeline.
13 The authorized officer is located in the Alaska Pipeline
14 office, which is located in Anchorage, Alaska, and has
15 a key staff in the principal disciplines, namely,
16 administrative, scientific, and technical.

17 Through the Alaska Pipeline
18 office staff the authorized officer directs the
19 implementation of the stipulations. The Alaska Pipeline
20 office staff is supported in this work by the third
21 party contractor, which furnishes all administrative,
22 scientific, and technical personnel required to carry
23 out design review , process applications for
24 notice to proceed, and furnishes scientific technical
25 field personnel to assist the authorized officer's
26 field representatives, thus the third party contractor
27 functions as an integral part of the Alaska Pipeline
28 office staff.

29 Mechanics Research or the
30 third party contractor uses his home office's abilities

Thompson, MacLeod, Skinnarland
In Chief

1 to select staff and consultants, and also for a
2 computerized processing of all routine analysis of
3 administrative and surveillance functions. The design
4 review was carried out in the offices of the
5 permittees, and the consultant's design offices in
6 Houston for the pipeline, and in Los Angeles for the
7 pump stations and the harbour facilities. All other
8 activities are carried out from the Alaska Pipeline
9 office in Anchorage, Alaska, and under the direction
10 of a third party contractor project manager.

11 Q Would you please give
12 your analysis of the most pertinent features of the
13 Alaska experience that would be relevant to a Mackenzie
14 Valley Gas Pipeline?

15 A One of the principal
16 problems that faced the authorized officer in implemen-
17 ting the stipulations in connection with the Alaska
18 Oil Pipeline was a split jurisdiction within the
19 federal and state authorities. The federal responsi-
20 bility for pipeline integrity, however, gave the
21 authorized officer through the responsibility for
22 pipeline safety, jurisdiction over the design review,
23 including pipeline alignment and construction modes.
24 However, in regard to the field implementation and
25 surveillance, the jurisdiction changes hands over
26 100 times from Prudhoe Bay to the Valdez terminal.

27 Third, the State of Alaska
28 under the agreement, became the owner of the access
29 road from the Yukon River to Prudhoe Bay, and thus
30 the technical supervision of this major feature was

Thompson, MacLeod, Skinnarland
In Chief'

1 state responsibility. Most of the people responsible
2 for protecting the public interest in connection with
3 the Alaska Oil Pipeline now agree that it would
4 be much simpler to implement the environmental
5 stipulations if all relations between the regulatory
6 bodies and the permittees were handled through a
7 single authority.

8 In regard to the procedures
9 set forth in the stipulations for the Alaska Oil
10 Pipeline, the Alaska approach was a great step towards
11 protecting public interest in connection with major
12 resource developments in remote and environmentally
13 sensitive areas. However, the experience so far shows
14 that the essentially negative control provided for
15 in the stipulations in the Alaska Oil Pipeline
16 agreement and the grant of right-of-way for the
17 Trans-Alaska Pipeline, Exhibit "D", is not practical.
18 The lead times included for example, in clause 1.7
19 "Notice to proceed" and particularly provisions 1.7.2,
20 the preliminary design submissions, and 1.7.4,
21 application for notice to proceed, are too short to
22 be effective.

23 Q Excuse me, Mr. Skinnarland,
24 I assume that those are references to your study that
25 was submitted as an exhibit.

26 A No sir, those are
27 references to the stipulations which I understand is --

28 Q Oh, I see.

29 A -- an exhibit before
30 the Inquiry.

Thompson, MacLeod, Skinnarland
In Chief

1 THE COMMISSIONER: That's in
2 the right-of-way agreement in Alaska, yes.

3 Q Will you explain, sir --
4 I take it you will -- what you mean by saying that
5 those lead times in the Alaska right-of-way agreement
6 are too short to be effective?

7 A Yes, and I continue
8 here, are some of the -- it is my opinion the reasons
9 that they are too short.

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Thompson, MacLeod, Skinnarland
In Chief

1 Oil On projects such as the Alaska
2 Pipeline of the Mackenzie Gas Pipeline, logistics lead
3 time for manufacture and transport of materials and
4 equipment run as much as twelve to eighteen months.
5 Control procedures scheduled as late as ninety days
6 prior to field execution, as is the case for the
7 application of notice to proceed in the Alaska
8 procedure will have little or no input into the
9 construction methods and sequences.

10 Selection of their own type
11 of construction equipment and methods and lack of
12 consideration for the environmental factors in
13 sequencing of the construction work are key factors
14 which may cause undesirable impact and adverse social
15 and economic effects on the communities in the proximity
16 of the construction operations.

MR. EVANS:

17 Q What conclusions can be
18 drawn regarding procedures for implementation of
19 stipulations in connection with the Mackenzie Valley
20 Gas Pipeline?

21 A My principal conclusions
22 are these:

- 23 1. Responsibility for implementation of applicable
24 regulations and stipulations should be mandated
25 to a single authority.
- 26 2. The most effective means of implementing
27 stipulations and environmental impact abatement,
28 such as will come out of the Mackenzie Valley
29 Pipeline Inquiry, will be through a joint design
30 review by the developers and a designated single

Thompson, MacLeod, Skinnarland
In Chief

1 authority immediately upon granting a permit to
2 construct the Mackenzie Gas Pipeline.

3 3. Such a single authority should obtain the necessary
4 administrative report and scientific and technical
5 expertise through the engagement of a third party
6 contract.

7 4. Environmental criteria and stipulations should
8 form an integral part of the project's assigned
9 criteria. Thus, provisions setting forth the
10 environmental stipulations can be incorporated in
11 the supply and construction contracts. Such
12 provisions appear to be mandatory to effect
13 implementation of stipulations.

14 5. If the environmental considerations are interjected
15 in the design stages through a joint design review
16 by the developers and the responsible government
17 authority, environmental protection objectives
18 in most instances can be met without causing
19 delays during the execution of the project or
20 increasing costs. Even if design review phase
21 may indicate the need to change alignment, relocate
22 logistic facilities and/or change methods and
23 modes of construction to appreciably reduce such
24 impact.

25 6. An early co-operative approach between the
26 developers and the regulatory bodies representing
27 public interests regarding environmental impact
28 assessment in the broad sense and a positive
29 approach to many miles potential impact by redesign
30 , or change in methods during design stages, can

Thompson, MacLeod, Skinnarland
In Chief

1 achieve environmental impact abatement objectives
2 without delaying its execution and increasing
3 costs.

4 Q Mr. Skinnarland, would
5 you please comment on the existing agencies that might
6 be used to implement stipulations for the building
7 of a Mackenzie Valley Gas Pipeline?

8 A The major part of any
9 Mackenzie Gas Pipeline and contiguous production
10 collection and scrubbing systems will be located north
11 of the sixtieth parallel and therefore, mainly Federal
12 laws, statutes, regulations and authorities are
13 involved. Some responsibilities have been delegated to
14 governments of the Northwest and Yukon Territories and
15 to municipalities within these Territories, but the
16 Federal Government has retained the principal powers
17 which are vested in the Department of Indian and
18 Northern Affairs.

19 Of the existing agencies, I
20 would like to start with the Department of Indian
21 and Northern Affairs. Under the Indian Affairs and
22 Northern Development Act, Indian Affairs as for DINA
23 has for practical purposes total mandate over development
24 in the North; the affairs of the native people, including
25 protection of their rights; and over environmental
26 issues in the Territories.

27 In addition to the Indian
28 Affairs and Northern Development Act, DINA is mandated
29 to implement the following acts in the North: The
30 Territorial Lands Act; the Northwest Territories Act;

Thompson, MacLeod, Skinnarland
In Chief

1 Yukon Territories Act; Northern Inlands Water Act;
2 Oil and Gas Production and Conservation Act.

3 DINA's mandate in the North
4 is extremely broad creating a serious conflict of
5 interests situation. DINA is responsible for the
6 interests of the native people, for promoting economic
7 development of the oil and gas production, and for the
8 protection of the environment in the North.

9 The general problem that I
10 think from DINA's broad mandate have been discussed in
11 detail by others, such as Usher and Beakhust in 1973 and
12 Beauchamp in 1974. Both reports, I believe, are before
13 this Commission or Inquiry and I will not repeat it
14 here. There is no doubt that DINA has the mandate
15 and the responsibility to set priorities to achieve
16 the government's stated national objectives in the
17 North. The record for exploration for hydrocarbons
18 and other developments in the North show very little
19 evidence that DINA gives priority to the long-range
20 interests of the native people, and the Canadian
21 citizens which are the key items in the stated national
22 objectives.

23 DINA has presently no
24 organization capable of implementing stipulations which
25 will require a comprehensive design review of such a
26 major project as the Mackenzie Gas Pipeline. The
27 second agency I'd like to discuss is the National
28 Energy Board. Under the National Energy Board Act,
29 the National Energy Board has jurisdiction over pipelines
30 for transmission of hydrocarbons between the provinces

Thompson, MacLeod, Skinnarland
In Chief

1 for pipelines extending beyond the limits of a province.
2 Pipelines are defined to include the pertinent
3 facilities. There is a direct overlap in the definition
4 of pipelines under the Oil and Gas Production and
5 Conservation Act which is administrated by DINA in the
6 North and the Departments of Energy Mines and Resources
7 elsewhere.
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Thompson, MacLeod, Skinnarland
In Chief

1 It appears, however, that
2 DINA has conceded the responsibility for the Mackenzie
3 Gas Pipeline to the National Energy Board while DINA
4 intends to retain the responsibility for oil and gas
5 production, gathering, and processing systems. N.E.B.
6 under their mandate, provided for in the National
7 Energy Board Act, has issued the gas pipeline regula-
8 tions which for practical purposes cover all aspects
9 of the design, construction, operation and abandon-
10 ment of gas pipelines. These regulations include
11 specific provision for northern regions which by
12 definition corresponds to north in this brief.

13 The third group is Environment
14 Canada. Environment Canada has specific mandate regard-
15 ing migratory birds and fisheries, and undoubtedly
16 some general responsibilities under the mandate given
17 the Department when it was formed. Environment
18 Canada administrates the following Acts:

- 19 . Fisheries Act
20 . Migratory Birds Convention Act
21 . Clean Air Act

22 Environment Canada's present
23 activities in the Mackenzie area are principally
24 through the Environment Protection Service, but the
25 staff is by and large delegated to serve as advisory
26 to DINA. Environment Canada's mandate regarding
27 migratory birds and protected animal species is clear
28 and is administrated through the Canadian Wildlife
29 Service. However, most of these responsibilities
30 have been delegated to the Government of the Northwest

Thompson, MacLeod, Skinnarland
In Chief

1 Territories, that is for the Northwest Territories.

2 The present situation is that
3 Environment Canada has no real authority in the north
4 regarding implementation of environmental stipulations
5 in connection with major resource development projects.
6 Environment Canada has, in the Environmental Protection
7 Service, an organization designed to monitor implemen-
8 tation of statutes and regulations under their adminis-
9 tration; thus Environment Canada and the Environmental
10 Protection Services have neither organization nor
11 expertise to effectively implement stipulations for
12 a major project in the north such as a Mackenzie Gas
13 Pipeline.

14 THE COMMISSIONER: Miss Hutchin-
15 son, could I borrow your pen? Mine's run out of ink.

16 MR. EVANS: Q You may continue,
17 Mr. Skinnarland.

18 A The Department of
19 Transport has jurisdiction over navigable waters,
20 which include the Mackenzie River and many other
21 tributaries. It also has regulatory authority regarding
22 aviation and shipping. It is responsible for the
23 administration of the following Acts:

- 24 . Navigable Waters Protection Act
- 25 . Canada Shipping Act
- 26 . National Harbour Boards Act

27 The Northern Transportation
28 Company Limited, a Crown corporation, is also adminis-
29 trated by the -- or under the Department of Transport.
30 The Northern Transportation Company is the major river

Thompson, MacLeod, Skinnarland
In Chief

1 transportation -- the major river transportation
2 company operating from the Great Slave Lake to the
3 Arctic.

4 Department of Transport' s
5 responsibilities are specific and no particular
6 problems regarding implementing its requirements in
7 connection with a Mackenzie Gas Pipeline can be foreseen.
8 Further, there could be little or no conflict or overlap
9 with environmental or social-economic stipulations.

10 The last group I want to
11 mention is the Department of Public Works. The Depart-
12 ment of Public Works is probably the only government
13 department which from in-house resources could muster
14 an organization with sufficient technical know-how
15 and administrative capabilities to effectively
16 implement stipulations for a major resource development
17 in the north, if it was given the authority. The
18 performance of the Department of Public Works in
19 connection with highway development in the Mackenzie
20 Valley, however, raises serious questions about their
21 attitudes towards the interests of the native people
22 and environmental protection.

23 From the review of the mandates
24 of the existing agencies, I am of the opinion that
25 it is fair that a considerable overlap in responsi-
26 bilities exists between DINA and the National Energy
27 Board. DINA un der the present Acts is the only
28 authority which can grant a right-of-way north of the
29 60th Parallel, and further, DINA has the responsibility
30 to take the interests of the native people and the

Thompson, MacLeod, Skinnarland
In Chief

1 non-native residents of the north into consideration
2 before granting such a right-of-way.

3 The National Energy Board under
4 its responsibility for public safety in connection with
5 a pipeline also has responsibility to the people in the
6 north and their properties. This part of the National
7 Energy Board responsibility clearly includes responsi-
8 bility for the technical integrity of the pipeline and
9 the control over the construction activities and the
10 operation of the pipeline system. These responsibili-
11 ties have been recognized by N.E.B. or National Energy
12 Board through the issue of the Gas Pipeline Regulations.

13 Considering the basic
14 conclusions that are elsewhere in this brief, or the
15 brief attached to the testimony, that the key to
16 successful implementation of stipulations is through
17 design reviews and the inclusion of environmental
18 and socio-economic implementation submissions in the
19 supply and the construction contracts. The responsi-
20 bility of implementation of stipulations should be
21 assigned to N.E.B.

22 This is what is in testimony.
23 I would like to make a slight modification to that
24 statement based on opinions by Dr. Thompson later
25 in here, and if I may I would like to add this at
26 this time.

27 It starts in the same way,
28 considering the basic conclusions elsewhere in this
29 brief that the key to successful implementation of
30 stipulations is through design reviews and the

Thompson, MacLeod, Skinnarland
In C hief

1 inclusion of environmental and socio-economic
2 implementation conditions in the supply and construction
3 contracts, the responsibility for implementation of
4 stipuations to be assigned to a single authority. This
5 authority should be given a mandate based on the Nation-
6 al Energy Board Gas Pipeline Regulations expanded to
7 include stipulations by DINA for granting right-of-way
8 based on recommendations from the Berger Commission
9 or the Mackenzie Gas Pipeline Inquiry.

Thompson, MacLeod, Skinnarland
In Chief

1 THE COMMISSIONER: Maybe
2 you'd just repeat the last. Maybe we could just write
3 this down while you're going through it. It should
4 be assigned to a single authority with a mandate based
5 on the N.E.B. --

6 A Gas Pipeline Regulations.

7 Q Right, and what came
8 after that?

9 A Expanded to include
10 stipulations by DINA or Department of Indian & Northern
11 Affairs for granting right-of-ways based on the
12 recommendations from the Berger Commission in this
13 case; under the definition the Berger Commission has
14 been used in the brief for the Mackenzie Gas Pipeline
15 Inquiry.

16 THE COMMISSIONER: Right.

17 MR. EVANS: Maybe to avoid
18 confusion we could strike Mr. Skinnarland's original
19 reading of that paragraph. He repeated himself
20 largely.

21 THE COMMISSIONER: O.K.,
22 I'll understand that.

23 MR. EVANS: Q Mr. Skinnarland,
24 would you please comment on the concept of the authority
25 that should be established to implement stipulations
26 for the building of a Mackenzie Valley Gas Pipeline?

27 A It is my conclusion,
28 based on the studies leading up to this brief, that
29 a single authority should be responsible for the
30 implementation of environmental and socio-economic

Thompson, MacLeod, Skinnarland
In Chief

1 stipulations forming part of the granted right-of-way
2 and the certificate of public convenience and
3 necessity for a Mackenzie Gas Pipeline.

4 The National Energy Board
5 is the authority which presently has the essential
6 mandate to implement the type of stipulations which
7 will arise from the Berger Commission and the National
8 Energy Board hearings regarding a Mackenzie Gas
9 Pipeline. On setting up the authority the -- I have
10 drafted the following recommendations:

11 To set up the authority and
12 to establish its mandates applicable to the authorized
13 Mackenzie Gas Pipeline only, the government by order
14 of governor -in-council needs to establish a
15 Mackenzie Gas Pipeline Authority with an expanded
16 National Energy Board type mandate, and thus it has
17 possibility for implementation with the authorized
18 officers designed in the Gas Pipeline Regulations.

19 Then and/or modify the
20 Gas Pipeline Regulations applicable to a Mackenzie
21 Gas Pipeline only to provide the expanded powers
22 required for the authorized officer to implement the
23 stipulations arising from the Berger Commission and
24 the National Energy Board hearings.

25 Q Mr. Skinnarland, were
26 you going to continue and discuss the staffing of
27 the authority?

28 A Yes, yes.

29 THE COMMISSIONER: Before
30 you go on, Mr. Skinnarland, I take it that your

Thompson, MacLeod, Skinnarland
In Chief

1 original opinion was that the National Energy Board
2 since it already has responsibility by Statute for
3 regulating the construction and operation of gas
4 pipelines in the country, should regulate the construc-
5 tion and operation of this gas pipeline and that its
6 mandate under the National Energy Board Act should be
7 enlarged to encompass the responsibility for enforcing
8 the additional stipulations that you felt would emerge
9 from this Inquiry. You have now altered your
10 opinion, I gather, on the strength of representations
11 from Dr. Thompson. That was the impression you left
12 with me. Is that about the size of it?

13 A To some extent that
14 is the size of it, in terms of the solution I think
15 both Dr. Thompson and I agree that in case of the
16 Mackenzie Gas Pipeline, I think there has to be a
17 special authority and properly authorized officer. I
18 found from what I studied that the National Energy Board
19 and through its Gas Pipeline Regulations had the best
20 base to build on. They are not sufficient, they have
21 to be expanded, but that was the reason I went that
22 route in the original, and some of this work has been
23 through assistance from quite a number of legal people
24 in CARC and including Bill MacLeod, who will be able to
25 sum up this. But as I say, as to try to have a somewhat
26 unified presentation to the Inquiry, we looked at it
27 from this point of view and modified it. But we still
28 have independent opinions as to certain aspects, but
29 basically it has to go through a single authority.

30 Q Well, at least he didn't

Thompson, MacLeod, Skinnarland
In Chief

1 try to persuade you, I gather, that the B.C. Energy
2 Commission should regulate this.

3 A No, he didn't go that
4 far.

5 MR. EVANS: Q Would you con-
6 tinue then, Mr. Skinnarland, and discuss your ideas
7 on the staffing of the authority, please?

8 A The staffing of the
9 authority should be limited to the key positions
10 required to carry out the mandate for implementation
11 of the stipulations, based on using a third party
12 contractor to carry out the administrative services
13 and to furnish technical and scientific expertise
14 for design review and surveillance.

15 The authorized officer, must
16 per force be a civil servant, seconded either from
17 the National Energy Board or DINA staff, or other
18 government service or engaged specifically for the
19 position. The authorized officer must have experience
20 in managing large fast-moving construction undertakings.
21 The authorized officer will need several authorized
22 officer's representatives to represent him on the
23 various sections of the project, depending largely
24 on the pipeline company's organization of the construc-
25 tion operations. The authorized officer's representa-
26 tives must also be civil servants posted to the
27 implementation authority. The authorized officer's
28 representatives must have experience similar to the
29 owner's representatives on major construction projects.
30 The authorized officer must be assigned an in-house

Thompson, MacLeod, Skinnarland
In C hief

key
1 /staff of experts to advise him on options and alterna-
2 tives available to meet their objectives of the
3 stipulations. This staff may include experts reassigned
4 from various departments involved, such as DINA,
5 Environment Canada, Energy Mines & Resources, and
6 others. The in-house staff must include specialists
7 on wildlife, fisheries, permafrost, the affairs of
8 the native people, etc. ,and an administrative chief
9 to handle the formalizing of third party contract
10 work and the notice to proceed provisions.

11 Regarding the third party
12 contractor, to assist the authorized officer in
13 carrying out his responsibilities, a third party
14 contractor must be engaged to handle all administra-
15 tive services, the design review, evaluation of
16 notice to proceed applications, technical and
17 scientific assistance to the authorized officer's
18 representatives. The scope of the third party
19 contact and the procedure for selecting the third
20 party contractor should be similar to those used for
21 the Alaska Oil Pipeline modified to Canadian practices.

22 The authorized officer may
23 ~~at~~ any or all times inspect the on-site activities
24 of the company (the company is here used in the
25 definition by the National Energy Board, namely
26 the applicant) in connection with the pipeline system,
27 and shall at all times have access to the pipeline
28 system.

29 Official representatives of
30 any, federal or territorial authority may also inspect

Thompson, MacLeod, Skinnarland
In Chief

1 such activities if in the opinion of the authorized
2 officer such inspection is necessary for the perfor-
3 mance of his duties which relate to the pipeline
4 system.

5 The authorized officer may
6 call upon the company to furnish at any time any or
7 all data related to pre-construction, design construction
8 and commissioning activities undertaken in connection
9 with the pipeline system.

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Thompson, MacLeod, Skinnerland
In Chief

1 The authorized officer may at
2 any time require a company to make modification of the
3 pipeline system without liability or expense to the
4 authority as it deems necessary to prefect or maintain
5 stability of geologic materials to maintain the in-
6 tegrity of the pipeline system to preserve fish and
7 wildlife habitats, to protect the environment and/or
8 to protect the public interest.

9 The authorized officer may,
10 at any time, issue written decisions suspending any
11 activity of the company in connection with the con-
12 struction of the pipeline system which in the judgment
13 of the authorized officer, threatens serious or irrepar-
14 able harm to life, human or other, any other element
15 of the environment or property. In the event the
16 authorized officer determines that the company has
17 failed or refused to comply with any provisions of the
18 permits existing statutes and regulations, the stipu-
19 lations or any other condition by the federal or terri-
20 torial governments in connection with the construction
21 of the pipeline system and after such due notice
22 as the authority or its authorized officer deems prac-
23 ticable, the authorized officer may issue a written
24 decision suspending or terminating any or all activities
25 under any or all such permits or appraisals.

26 The company shall not presume
27 such suspended or terminated activities until given
28 written authorization to do so by the authorized officer.
29 Any dispute arising under existing statutory regulations
30 the, grant of right-of-way and/or the certificate of

Thompson, MacLeod, Skinnarland
In Chief

1 public convenience a necessity and stipulations attached
2 thereto, shall be decided by the Federal Cabinets design-
3 nated as responsible for the authority. Any decisions
4 or approvals of the authorized officer which are re-
5 quired by the stipulations to be in writing, may in an
6 emergency be issued orally with subsequent confirmation
7 in writing as soon as thereafter possible.

8 Decisions of the authorized
9 officer whether given orally/^{or}in writing shall be
10 effective upon issuance unless specifically provided
11 otherwise.

12 The absence of any comment
13 by the authority, the authorized officer or any employee
14 of the authority with respect to any plan, design,
15 specification or document which may be filed by the
16 company with the authorized officer, shall not be
17 deemed to represent in any way, whatsoever, any assent
18 to, approval of or concurrence of such plan, design,
19 specifications or other document or of any action
20 proposed there.

21 The authorized officer shall
22 issue a notice to proceed only when in his judgment,
23 the design, construction and commissioning proposal
24 are in conformity with the terms and conditions of all
25 applicable federal and territorial statutes and regu-
26 lations and the stipulations.

27 The authorized officer may
28 revoke in whole or in part any notice to proceed
29 which has been issued when in his judgment, unforeseen
30 conditions arise which may require such revocation.

Thompson, MacLeod, Skinnarland
In Chief

1 I think I should add here,
2 that portions of this has been worked out in co-opera-
3 tion with the many members of the legal staff again
4 referring to Bill MacLeod and Al Lucas and so on in
5 preparing summaries.

6 Now, regarding funding of the
7 authority.

8 The company shall pay for all
9 reasonable costs for implementing the requirements of
10 the grant of right-of-way and the issuance of a cer-
11 tificate of public convenience and necessity under the
12 mandated responsibility of the authorized officer.
13 The authorized officer shall within 30 days of granting
14 right-of-way an issuance of certificate of public
15 convenience^{and} necessity furnish the company with a
16 total budget and the monthly cash requirements for the
17 duration of the budgets.

18 The total budgets for imple-
19 mentation activities of the authorized officer shall
20 not exceed 1 percent of the total cost of the pipeline
21 including financing costs during the construction.

22 The company shall have the
23 right to audit the books of the authority. The expendi-
24 tures against the funds furnished by the company to pay
25 for implementation activities, shall be governed by
26 federal regulations for expenditures against public
27 funds.

28 Q As a result of your
29 study, what procedures do you think would be necessary
30 to properly implement the stipulations for the building

Thompson, MacLeod, Skinnarland
In Chief

of the Mackenzie Valley Gas Pipeline?

A The implementation procedures I propose, are as follows:

In addition to or in lieu of the general requirements and their paragraphs S27 and through S39 of the National Energy Board Act and of the gas pipeline regulations.

The procedure will form part of the provisions under the sub- heading, "Setting Up the Authority."

The first part is the design review. The intent of the joint design review is to ensure compliance with applicable statutes and regulations and the stipulations without causing undue delay to the company during final design and construction of the pipeline system. Upon being granted a right-of-way and obtaining the certificate of public convenience and necessity from the respective authorities, the company shall, within 30 days, submit to the authorized officer plans, procedures and a schedule for a joint design review of the entire pipeline system by the company and the authorized officer. The design review shall be -- shall include but not be limited to project design criteria, in detail, technical, environmental and socio-economics. Design parameters, disaster prevention factors and disaster/ requirements, material and equipment specification codes for welding and testing et cetera, standard details, alignment, method of installation, construction schemes and methods, construction plans and specifications, schedules, logistics,

Thompson, MacLeod, Skinnarland
In Chief

1 testing and quality control procedures, commissioning,
2 operation and monitoring, disaster containment pro-
3 cedures and abandonment.

4 The design review will take
5 place at the locations convenient to the company,
6 subject to the concurrence by the authorized officer.

7 The detailed procedures for submission of design
8 increments and preliminary approvals shall be prepared
9 jointly by the company and the authorized officer.

10 If mutual agreement can not be reached, the authorized
11 officers shall issue detail procedures.

12 The authorized officer will
13 engage a third party contractor or contractors, with
14 expertise in environmental protection and in design
15 construction and operation of gas pipeline systems, to
16 assist ⁱⁿ him the design review to assure compliance with
17 the stipulations and applicable statutes and regulations.

18 The authorized officer will
19 as far as practical give final approval to the designs
20 of the pipeline systems and methods and modes for
21 construction during design review, subject to formal
22 approval in accordance with section below, Notice to
23 Proceed. The company shall, within 90 days of receiving
24 a certificate for public convenience ^{and} necessity, and
25 a right-of-way permit, submit to the authorized officer
26 a project control schedule using a scheduling system
27 acceptable to the authorized officer. The project
28 control schedule shall govern all of the company activi-
29 ties and shall include design reviews, issue of con-
30 struction plans and specifications, major supply contracts

Thompson, MacLeod, Skinnarland
In Chief

1 and construction contractors logistics and activities
2 and applications for Notice to Proceed in addition to the
3 basic construction schedule. The schedule shall clearly
4 show environmental and socio- economic restraints set
5 forth in the stipulations.

6 The authorized officer shall
7 review and approve or return for revision the project
8 control schedule to the company within 60 days.

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Thompson, MacLeod, Skinnarland
In Chief

1 The original submission shall
2 include procedures for updating the schedule at thirty
3 day intervals and for rescheduling if disruptions occur
4 during the execution of the project which will infringe
5 upon environmental and socio-economic restraints.

6 Prior to inviting tenders for
7 major supply and construction contracts, the companies
8 shall submit to the authorized officer for approval
9 the respective technical specifications, special
10 conditions, plans and schedules for delivery and/or
11 construction contract documents. The authorized
12 officers shall expeditiously review such submissions and
13 advise the company of approval and/or request for
14 changes and/or additional information within thirty
15 days.

16 On notices to proceed. The
17 company shall not initiate any construction in the
18 field without prior written permission by the authorized
19 officer. Such notices to proceed shall authorize
20 commencement of specific construction support
21 activities and/or construction of defined segments of
22 the pipeline system.

23 The company shall submit
24 application for notice to proceed for each of the
25 construction activities shown as a segment on the
26 control schedule at least 180 days prior to scheduled
27 commencement of the field activities. Each application
28 shall be supported by such data required by the
29 authorized officer and defined by the design review
30 plan and schedule called for in a previous section of

Thompson, MacLeod, Skinnarland
In Chief

1 this recommendation.

2 The authorized officer shall
3 within ninety days either issue a notice to proceed
4 or request additional information or suggested
5 modification deemed necessary to comply with the
6 applicable statutes, regulations and stipulations.

7 If the original application
8 for notice to proceed is found deficient, the authorized
9 officer will make all efforts to issue a notice to
10 proceed within thirty days of receipt of the final
11 additional data requested.

12 On field surveillance: The
13 authorized officer will assign to each of the company's
14 construction segments an authorized representative
15 supported by scientific or technical experts furnished
16 by the third party contractor to verify that the
17 construction is carried out in accordance with the
18 notice to proceed and approved plans, specifications
19 and procedures and/or to approve the company's field
20 proposals for selection of alternatives or changes for
21 unforeseen conditions.

22 Changed conditions: As
23 unforeseen conditions arise during design, construction
24 and commissioning period, it may become necessary to
25 revise or amend the stipulations to protect the
26 environment. In that event, the company and the authorized
27 officer shall make all efforts to agree as to what the
28 revisions or amendments shall be made. If they are
29 unable to agree, the authorized officer will issue a
30 written directive advising the company of his decision.

Thompson, MacLeod, Skinnarland
In Chief

1 On appeals: The company may
2 appeal a decision of the authorized officer directly
3 to the Federal Cabinet Minister designated as res-
4 ponsible for the authority. If any appeal is to be
5 taken, notice of appeal shall be filed with the
6 Federal Cabinet Minister, designated as responsible
7 for the authority within thirty days after issuance
8 of the decision being appealed. The notice shall
9 set forth with particularity the decision being
10 appealed, the facts of the matter and the applicable
11 laws, regulations and stipulations together with such
12 written showing and argument on the facts and law as
13 the company may wish to present to justify modification
14 or reversal of the decision. All statements of facts
15 shall be under oath, unless the Federal Cabinet Minister
16 otherwise approves for good cause shown. The decision
17 of the authorized officer shall not be suspended during
18 the pendency of the appeal, but shall continue in full
19 force and effect, until the Federal Cabinet Minister
20 shall otherwise rule.

21 Q Mr. Skinnarland, how would
22 you suggest that provision be made in this model for
23 input by interested parties into the implementation
24 process?

25 A To provide a machinery
26 for the interested party, I recommend an advisory board.
27 To assist the authorized officer in the implementation
28 process an advisory board will be established with
29 representation from each of the interested parties.

30 The board shall have

Thompson, MacLeod, Skinnarland
In Chief

1 representatives from the following principal groups
2 and from other interested parties as decided by the
3 Minister from time to time. In this connection, I have
4 listed the Department of Indian and Northern Affairs,
5 Environment Canada, Energy Mines and Resources,
6 Government of Yukon and Northwest Territories, COPE,
7 Northwest Territory Indian Brotherhood, the Council
8 of Yukon Indians, The Company, Canadian Arctic Resources
9 Committee, Canadian Wildlife Federation and Canadian
10 Nature Federation.

11 The functions of the advisory
12 board shall be to evaluate proposals for changes in
13 the stipulations and implementation procedures and
14 other matters of related concern. Such proposals
15 may originate with the authorized officer for any of
16 the principal interested parties on the board. The
17 board shall advise the authorized officer of its
18 recommendation in writing. If such recommendations
19 are acceptable to the authorized officer or within his
20 mandate, the recommendation shall take effect immediately.

21 If such recommendations are
22 not acceptable to the authorized officer or not within
23 his mandate, the authorized officer shall submit the
24 recommendations with his comments to the Minister
25 who shall decide within thirty days rule on the
26 submission. The Minister's ruling shall be binding
27 on the parties concerned.

28 Regarding meetings of the
29 advisory board: The board shall meet at least four
30 times a year or at such intervals as the board may

Thompson, MacLeod, Skinnarland
In Chief

1 decide from time to time. The authorized officer may
2 request a board meeting at any time, giving fifteen
3 days notice with the agenda for the meeting accompanying
4 the notice.

5 The reports to the advisory
6 board: The authorized officer shall submit to the
7 advisory board fifteen days prior to each regular
8 meeting a status report on the implementation of the
9 stipulations.

10 On procedures: The advisory
11 board shall establish its own procedures regarding
12 quorum, voting and submissions to the board and shall
13 be empowered to amend such procedures from time to
14 time all subject to the approval of the Minister.

15 Funding of the advisory
16 board: Funding for the operation of the advisory
17 board including secretarial services but exclusive
18 of salaries or fees shall be provided for by the
19 authority. Salaries and fees for the board members
20 shall be provided for by the respective interested
21 parties.

22 Since I drafted that with
23 reference to the other part of the organization, and
24 as shown on the organogram or organization chart
25 which is submitted with my testimony, I agree with
26 Dr. Thompson's proposal that instead of having the
27 advisory board directed to the authorized officers;
28 that there would be a better arrangement for the
29 involvement of the local people and the native people
30 to have an ombudsman who is responsible to the

Thompson, MacLeod, Skinnarland
In Chief

1 Parliament and who uses this advisory board. I would
2 like to make an amendment to the filed draft of that
3 organization chart where it shows the third party
4 contractor connected to the authorized officer's
5 field representative, that connection should show
6 directed to authorized officer's staff.

7 There will be a connection on
8 the lower level if you use this kind of an organization
9 between the field staff or the third party contracted
10 and the authorized officer's field representative.
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Thompson, MacLeod, Skinnarland
In Chief'

1 MR. EVANS: Now, Mr. Commis-
2 sioner, that completes Mr. Skinnarland's evidence in
3 chief. I am in your hands as to whether to continue
4 with Mr. MacLeod's evidence at this time.

5 THE COMMISSIONER: Well, I
6 think we might as well adjourn for our lunch. Mr.
7 MacLeod's evidence would postpone our lunch hour
8 unduly if we were to hear it in full.

9 So we'll come back -- what
10 time do you think, 1:30?

11 MR. EVANS: Yes, Mr. Commis-
12 sioner, I'm in favor of coming back at 1:30.

13 THE COMMISSIONER: You'll
14 find that we won't all be here at 1:30, but let's
15 try anyway.

16 MR. EVANS: O.K., thank you,
17 Mr. Commissioner.

18 (LETTER FROM DR. BLISS RE DELTA ROUTE EVALUATION
19 DATED OCTOBER 6, 1976 MARKED EXHIBIT 858)

20 (LETTER FROM DR. GEIST RE COMMENTS BY JAKIMCHUK
21 DATED MAY 25, 1967 MARKED EXHIBIT 859)

22 (REPORT BY DR. WILLIAMS RE FROST HEAVE MARKED
23 EXHIBIT 860)

24 (RESPONSE TO DR. WILLIAMS' REPORT BY N.E.S.
25 DATED JUNE 1976 MARKED EXHIBIT 861)

26 (QUALIFICATIONS & EVIDENCE OF E. SKINNARLAND
27 MARKED EXHIBIT 862)

28 (BRIEF ON AUTHORITIES & PROCEDURES FOR IMPLEMEN-
29 TATION OF STIPULATIONS FOR M.V.P. BY E. SKINNAR-
30 LAND DATED OCTOBER 1976 MARKED EXHIBIT 863)

Thompson, MacLeod, Skinnarland
In Chief

1 (ORGANIZATION CHART, PIPELINE AUTHORITY MARKED
2 EXHIBIT 864)

3 (QUALIFICATIONS & EVIDENCE OF W.G. MACLEOD
4 MARKED EXHIBIT 865)

5 (QUALIFICATIONS & EVIDENCE OF DR. A.R. THOMPSON
6 MARKED EXHIBIT 866)

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8 (PROCEEDINGS ADJOURNED TO 1:30 P.M.)
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Thompson, MacLeod, Skinnarland
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. EVANS: Mr. Commissioner,
I guess we can reconvene.

THE COMMISSIONER: Before
we begin again with the evidence, I just want to
reiterate some of the things I said last week when
Mr. Gibbs was here. I am directing Commission counsel
to disclose the recommendations he proposes to make
to me as the Commissioner of this Inquiry so that he
and his staff do not the private ear of the Commission.

I want the pipeline companies,
the native organizations, the environmental groups,
the municipalities and the Chamber of Commerce to know
what terms and conditions Mr. Scott intends to propose.
I want his best judgment of the evidence and at the
same time, I want all the other participants to tell
me what they think of his proposals and to give me
their own proposals before I make up my mind.

I am not bound in any way by
what Mr. Scott and his staff propose. They do not
speak for me, nor am I bound by the recommendations
of any other participant. I am anxious though to have
the views of all of them before writing my report.
All right, Mr. Evans, we'll carry on then.

MR. SCOTT: Before Mr.
Evans carries on, Mr. Commissioner, I think it would
be helpful if I told the participants here the evidence
that I understand will be called following this panel
for the balance of this week and if I may suggest, the
order in which it be called so that there will be no

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Thompson, MacLeod, Skinnarland
In Chief

1 doubt. If there is, or if there are any difficulties,
2 I'd appreciate it if the other counsel would speak to
3 me.

4 Tomorrow, we will have the
5 evidence of Mr. Bergasse which has been circulated.
6 Following him, Mr. David Norton of Whitehorse will be
7 recalled for cross-examination. Following him, the
8 evidence of Martin H. Rogul will be called by Commission
9 counsel. His evidence will be on hand very shortly.
10 Following that and presumably on the 14th Commission
11 counsel will be calling the evidence of Donna Christie
12 and the evidence of the Union Training Panel which is
13 composed of Messrs. Weir, Schultz, Dyck and Nicholson
14 and lastly, the evidence of the manpower resource
15 panel which is composed as the participants know because
16 they've had the evidence for some time now of a number
17 of government representatives. Following that, Mr.
18 Bayly will call his panel on environmental compliance
19 and controls.

20 That, as I understand it, is
21 the evidence that will be heard this week and represents
22 the conclusion of the evidence to be called before the
23 Inquiry. I should add that there are two other--one
24 other paper that I propose to file. The participants
25 have not read it. If they have any questions to put
26 to the person making it, that will have to be arranged
27 on a subsequent occasion, I'm sorry to say, but it's
28 a paper prepared by Professor Quiran on inflationary
29 impacts of pipeline construction in the Mackenzie
30 Valley and that will be circulated this afternoon.

Thompson, MacLeod, Skinnarland
In Chief

1 THE COMMISSIONER: I want you
2 all to understand that the papers that are filed,
3 briefs that are submitted are all evidence before the
4 Inquiry and when a panel is before the Inquiry, they
5 are asked by counsel or by myself when they depart to
6 reflect on one or two points and to write a letter to
7 the Inquiry and do so. The letter is evidence as well.
8 I hope you all understand that. I have in mind, for
9 instance, the voluminous correspondence which thankfully
10 has ended between Dr. Geist and Mr. Jackimchuk.

11 MR. SCOTT: Mr. Commissioner,
12 why have you concluded that it was ended? The last
13 letter was filed today.

14 THE COMMISSIONER: Oh, I
15 haven't seen that. Well, that's from Jackimchuk.
16 Well, at any rate, those letters like the submissions
17 that come in from people around the country, simply
18 because they're not sworn, are nevertheless evidence
19 before this Inquiry. I'm sure you all understand that
20 but I think it's a point well worth making.

21 MR. SCOTT: I should emphasize,
22 sir, the reason that I am filing Professor Quiran's
23 evidence is that first of all to save time. It's
24 fairly technical and I don't anticipate there will be
25 any cross-examination about it but if there is, a
26 separate arrangement will have to be made for that
27 because Professor Quiran will not take an airplane
28 and consequently to get him here takes a week and to
29 get him back takes a week. So, we'll have to arrange
30 for his cross-examination in a less exotic place.

Thompson, MacLeod, Skinnarland
In Chief

1 THE COMMISSIONER: I think I
2 should say that I appreciate the views that are
3 expressed in these letters because Dr. Schaefer in his
4 letter to the Inquiry reflected in the first two
5 paragraphs on the treatment of the hands of counsel
6 and suggested their whole cross-examination was protracted
7 and niggling and of no assistance to the Inquiry.

8 MR. BAYLY: I'm glad he was
9 my witness.

10 THE COMMISSIONER: Well, we're
11 ready now, I think.

12 MR. SCOTT: Very well.
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BURNABY 2, B.C.

Thompson, MacLeod, Skinnarland
In Chief

1 MR. EVANS:

2 Mr. Commissioner, I would like now to introduce to
3 the Inquiry Mr. William MacLeod and to lead his evi-
4 dence. I refer you Mr. Commissioner to the list of
5 qualifications attached to the back of this prepared
6 evidence and maybe Mr. MacLeod, you could just briefly
7 run over your educational background and your past and
8 current employment which relates to the --

9 MR. MACLEOD: Mr. Commissioner,
10 as you can see from the attached resume, with my
11 evidence, I completed a Bachelor of Laws Degree at the
12 University of British Columbia in May of this year.
13 I completed a Bachelor of Arts Degree in History at
14 Reed College in Portland, Oregon, United States on
15 which I did my undergraduate thesis on The Coming of
16 Unemployment Insurance in Great Britain. At Reed
17 College, I was honoured in recognition in the Dean's
18 List with the Joetta Eaton Drake Memorial Scholarship.
19 I attended the University of Warwick in Coventry, Eng-
20 land on exchange in my third year of my undergraduate
21 education. I attended high school at Carson Graham
22 Secondary School in North Vancouver in British Columbia
23 and there I was honoured, I'd been chosen outstanding
24 student in my graduating year, the outstanding student
25 in history, President of the Student Council.

26 Currently I am employed as a
27 law clerk to the Honourable Mr. Justice W. R. McIntyre
28 on the British Columbia Court of Appeal. My duties
29 include preparation of research on cases before the
30 Court of Appeal. For the last three summers I worked

Thompson, MacLeod, Skinnerland
In Chief

1 for Canadian Arctic Resources Committee in Ottawa, in
2 Vancouver and Northern Canada doing legal and policy
3 research on Northern Development Issues.

4 In previous summers I worked
5 for Scurry-Rainbow Oil Company Limited, Calgary in
6 various positions, general hand, chainman, linecutter,
7 driller's helper, geophysical assistant.

8 Q Would you please describe
9 the nature of your research on Water Administration in
10 the north?

11 A In August of 1974,
12 Canadian Arctic Resources Committee asked me to carry
13 out a general study of legal and policy aspects of the
14 administration of the Northern Inland Waters Act. I
15 think Mr. Evans has left a copy of the Act and Regula-
16 tions on the table before you, Mr. Commissioner.

17 This work involved a literature
18 review, a review of the transcripts of hearings, the
19 detailed examination of the Act and Regulations and
20 numerous interviews with government officials as to
21 the details of administration. My research involved
22 interviews in Ottawa, in the summers of 1974, 1975 and
23 1976. In Whitehorse in the spring of 1975, and 1976,
24 and Yellowknife in the spring of 1975. An early draft
25 of my study has been circulating for some months now.
26 My study which I understand has been filed with the
27 Commissioner is being published by Canadian Arctic
28 Resources Committee this fall. The summary version
29 may appear in the U.B.C. Law Review in the spring of
30 1976.

Thompson, MacLeod, Skinnarland
In Chief

1 Q Would you please describe
2 the relationship between the Northern Inland Waters Act
3 and other Northern water and environmental legislation?

4 A The Northern Inland Waters
5 Act is a Federal Act passed in 1970 and proclaimed in
6 force in 1972 which is analogous to Provincial water
7 and pollution control legislation. It regulates both
8 the use of freshwater and the deposit of waste in fresh-
9 waters in the Yukon and Northwest Territories. The Act
10 comes under the administration of the Department of
11 Indian and Northern Affairs, Northern Affairs Program,
12 Water, Forests, Lands and Environment Branch.

13 I'd say that this branch also
14 administers the territorial land use regulations and
15 the Arctic Waters Pollution Prevention Act.

16 Until the passage of the
17 Northern Inland Waters Act in 1970, there was no legis-
18 lation directed to the overall use and protection of
19 water resources in the Yukon and Northwest Territories.
20 This omission was probably due to equal measures of
21 neglect and conscious policy by Ottawa. It seemed
22 appropriate to governments up to that time "to allow
23 the exploitative industries, particularly oil and mining
24 to have access to the countryside as freely as possible,
25 with a minimum limitation on their activities" and that
26 quotation is from Mr. A. D. Hunt, who's acting assistant
27 Deputy Minister of Northern Development in the House of
28 Commons Standing Committee, March 12th, 1970, that --
29 in order to promote northern Development.

30 In theory, the use of water

Thompson, MacLeod, Skinnarland
In Chief

1 was regulated by the common law doctrine of riparian
2 rights imported from the English Common Law though in
3 fact several different statutes regulated different
4 aspects of water use. The Yukon Placer Mining Act
5 regulated the use of water for the purpose of placer
6 mining; the Yukon Quartz Mining Act regulated the use of
7 water for hard rock mining in the Yukon. The Northern
8 Inland Waters Act now regulates these uses.

Thompson, MacLeod, Skinnerland
In Chief

The Fisheries Act and regulations were in force in the north in 1970, but the Act was narrowly applied. Section 33 of the Act which prohibits the deposit of waste harmful to fish had just been amended to make it a useful tool for regulating pollution. The Fisheries Act was then administered by the Department of Fisheries; there was no Department of the Environment until 1971. There were only a few fisheries officers in the north and no scientific or pollution control staff. Today, the Department of the Environment has a large presence in the north in water management. The Environmental Protection Service of the Department of Environment has a general pollution prevention jurisdiction under Section 33 of the Fisheries Act that is nearly as extensive as DINA's. The Fisheries and Marine Service of the Department of the Environment exercises jurisdiction over such matters as relate solely to fish; for example, the supervision of river and stream crossings which may cause sedimentation harmful to fish.

The Canadian Wildlife Service, formerly a branch of DINA, now a branch of the Department of the Environment, has a continuing jurisdiction under Section 35 of the Migratory Birds Regulations to prevent the deposit of wastes in waters or in areas frequented by migratory birds.

The Ministry of Transport also had a role in water management in 1970 which continues through its jurisdiction over the Canada

Thompson, MacLeod, Skinnarland
In Chief

Shipping Act and regulations, which regulate the spills from shipping. The Navigable Waters Protection Act regulates the construction of possible obstacles to shipping, such as bridges and docks.

In co-operation with the Department of National Health & Welfare, the Territorial Governments through their Public Health ordinances controlled sanitary standards for sewage disposal, and water quality standards for drinking water. The Petroleum Products Ordinance in the Northwest Territories and the Gasoline Handling Ordinance in the Yukon are relevant to the control of spills of oil products. The Pesticide Ordinances regulate the use of pesticides. The Area Development Ordinances impose zoning type conditions on the use of lands which can extend to

"the supply, treatment and purification of water."

All of these territorial ordinances remain in force.

Now in the Northwest Territories there is an Environmental Protection Ordinance which gives broad powers of environmental protection to a chief environmental protection officer. The enforcement provisions of this ordinance have been little used; the Crown prosecutor in Yellowknife prefers not to use this legislation and instead relies on the Fisheries legislation. In the Yukon, an Environmental Protection Ordinance has been planned for some time but is still in its early draft stages.

The most effective water administration and protection powers, however, are

Thompson, MacLeod, Skinnerland
In Chief

1 those under the federal legislation which has been
2 introduced since 1969. The Northern Inland Waters
3 Act, covers the use of all fresh water in the north.
4 The Arctic Waters Pollution Prevention Act and
5 regulations prevent the deposit of waste into northern
6 salt waters. The Territorial Land Use Regulations
7 passed pursuant to the Territorial Lands Act, regulate
8 land use and have a considerable effect in controlling
9 damage to northern waters. Finally, under the Oil and
10 Gas Production & Conservation Act, regulations may be
11 passed prescribing measures necessary to prevent
12 water pollution as a result of oil exploration and
13 development. But no regulations have been passed as yet,
14 under the Oil and Gas Production & Conservation Act.

15 Recently, the Ocean Dumping
16 Control Act came into force and now requires that a
17 permit be obtained from the Minister of the Environment
18 to dump materials into the sea, which is defined to
19 include,

20 "Arctic waters under the Arctic Waters
21 Pollution Prevention Act."

22 Q Mr. MacLeod, would you
23 please outline the administrative structures and
24 arrangements created by the Northern Inland Waters
25 Act?

26 A The Northern Inland
27 Waters Act created in each territory an administrative
28 tribunal, called a Water Board. Each Water Board
29 is charged with the responsibility of carrying out
30 the purposes of the Act which are (paraphrasing

Thompson, MacLeod, Skinnarland
In Chief

slightly, this is from Section 9 of the Act):

"To provide for the conservation, development and utilization of the water resources of the Yukon Territory and of the Northwest Territories in a manner that will provide the optimum benefit therefrom for all Canadians and for the residents of the north in particular."

To accomplish these tasks, the Water Boards are given various powers including in respect of public hearings under the Act, all the powers of a Commissioner under Part I of the Inquiries Act and powers to make rules respecting its sittings, the procedures at hearings, and as to the carrying on of its work. Most importantly the Water Boards have the power to licence water users.

The Boards consist of not less than three, nor more than nine members which include at least one nominee of each of the departments of the Government of Canada that are most directly concerned with the management of water resources in the north, and at least three persons named by the Commissioner in Council for either of the respective territories.

Thompson, MacLeod, Skinnarland
In Chief

The boards created, as a result of the act, were to be working boards. They were to be experts chosen for their knowledge of the concerns of water management to take an important role in the evaluation of water projects, and not merely to act as representatives of their government departments. Their powers under the Act indicate that they were not merely to be mouth pieces of their departments but were to exercise their best judgment objectively and autonomously.

Also, the Water Boards do serve to co-ordinate government regulations in the North so that consistent policies can be taken with respect to development projects and so that industry is not required to go from department to department to get approval, but only to the Water Board.

The departments represented on the Water Boards are the Department of Indian Affairs--Indian and Northern Affairs, pardon me; the Department of the Environment whose many services, Fisheries and Marine Service, Environmental Protection Service, Inland Waters Directorate and Canadian Wildlife Service are represented by the Environmental Protection Service on the Board; National Health and Welfare, whose representatives speaks with regard to problems under the Public Health Ordinance; the Ministry of Transport which has authority under the Canada Shipping Act and the Navigable Waters Protection Act; the Department of Public Works which is the government department which does most dock and road construction

Thompson, MacLeod, Skinnerland
In Chief

1 in the North; and Energy, Mines and Resources, which is
2 the government department with expertise in hydro-
3 electric development.

4 In the Northwest Territories,
5 the Commissioner-in-Council has appointed a member of
6 the Department of Economic Development of the
7 Government of the Northwest Territories to the Board
8 as well. Otherwise, the Territorial representatives
9 have been prominent local citizens with practical
10 experience in construction or water resources of some
11 kind. In each Territory, there is a Chairman and a
12 Vice-Chairman of the Water Board, who are appointed
13 by the Minister of Indian and Northern Affairs, though
14 the appointees may be from other departments. The
15 Chairman or the Vice-Chairman chair the hearings under
16 the Act, and manage Water Board meetings.

17 The Water Boards have DINA
18 support staff in the northern capital, who carry out
19 most of the day to day administration of water resources.
20 In Ottawa, there are more DINA staff whose duties are
21 to co-ordinate and develop water policies and to work
22 with the Ottawa civil service in resource management.
23 This does not represent all the staff involved in
24 water management for, in fact, the member departments
25 of the Water Boards use their departmental staff
26 extensively in considering water licenses.

27 Thus, for example, the
28 Department of the Environment member of the Water
29 Board will refer a water license for a mining project
30 to the best expert in the Department of the Environment,

Q Would you please explain
ing a water license?

A The procedure for applying

A The procedure for applying

HURNABY, B.C.

Thompson, MacLeod, Skinnarland
In Chief

1 for a water license is set out in Section 11 of the
2 Act and in the regulations. A form must be filled out
3 stating the basic information about the application.
4 A ten dollar fee must be paid, except if the applicant
5 is the Crown and, according to the nature of the
6 project, surveys and designs of the project must be
7 submitted. Further information is usually requested
8 by the Controller of Water Rights by requesting that
9 a standard questionnaire on the proposed water use be
10 filled out.

11 The survey and design
12 requirements provided in the regulations stipulate
13 only the engineering type designs for projects. They
14 do not cover requirements of environmental impact
15 studies, which is a notable omission from the
16 regulations. Most of the environmental information
17 collected by the Water Boards is collected through the
18 questionnaires and through other requests for information
19 made by the Water Board staff. Section 11 (2) of the
20 Act states only that:

21 "the appropriate board shall require an application
22 for a license to provide it with such information
23 and studies concerning the use of water proposed
24 by the applicant as will enable it to evaluate
25 any qualitative and quantitative effects of the
26 proposed use on the water management area in
27 which the applicant proposes to use such waters".

28 The extent of environmental
29 information to be gathered then under the existing
30 Water Board arrangements remains discretionary, and likely

Thompson, MacLeod, Skinnarland
In Chief

1 very difficult to challenge in Court. The decision
2 whether a water license should be issued must be made
3 according to Section 10 of the Act.

4 Essentially, that section
5 says that where the application is for a water use that
6 existed at the time that the Act came into force, the
7 Board must satisfy itself that the license to be issued
8 is for the use of a substantially equivalent quantity
9 of water and that any waste produced by that undertaking
10 will be treated and disposed of in a manner that is
11 appropriate for the maintenance of water quality
12 standards to be prescribed pursuant to the regulations.

13 New uses of water are prohibited
14 from adversely affecting the prior rights of licensees
15 or of applicants for licenses who are entitled to
16 precedence in water use. A user is entitled to
17 precedence if his class of water use is said in the
18 regulations to be of a higher priority than the class
19 of use of the applicant. However, no regulations have
20 been passed setting priorities among classes of use
21 of water in water management areas, therefore all classes
22 of water use have equal priority. But a user is also
23 entitled to precedence if he has applied for a license
24 before another applicant.

25 The prior rights of licensees
26 are well protected under the Act. Licensees are
27 entitled to priority in the use of water. As to
28 authorizations, although there is no provision to
29 protect those merely authorized used waters, the Water
30 Board and Controller have treated those operating under
authorizations, as having rights similar to licensees.

Thompson, MacLeod, Skinnarland
In Chief

1 A new water user must also
2 satisfy the Board that other affected licencees will
3 be compensated. But so far the provision protecting
4 other licencees or applicants has not led to any
5 rejection of a licence application or any award of
6 compensation to an affected licencee or applicant.
7 Nor has the requirement that a licence applicant be
8 financially responsible defeated an application.

9 Licencees must comply as well
10 with water quality standards to be prescribed by re-
11 gulations. However, none have been prescribed. This
12 in my opinion may mean that the Water Boards have been
13 without jurisdiction so far to issue licences, or
14 authorization where there will be deposit of waste,
15 and licences issued to date may be void or voidable.
16 For an applicant for a licence must satisfy the Board
17 that waste associated with the use of waters to be
18 licenced:

19 "Will be treated and disposed of in a manner
20 that is appropriate for the maintenance of water
21 quality standards prescribed pursuant to para-
22 graph 26(e) of the Act."

23 I'm quoting from Section 10(1)(b)(3).

24 Regulation 11 extends this
25 requirement to applicants for authorizations. If I may
26 quote from that:

27 "Water may be used without a licence having
28 been issued if the controller has stated in
29 writing that he is satisfied that the proposed
30 use would not or would meet the applicable

Thompson, MacLeod, Skinnarland
In Chief

1 requirement of sub-section (10) (1) of the Act,"and so
2 on.

3 It is clearly impossible to
4 determine that the manner of disposal of waste will be
5 appropriate to the maintenance of water quality stand-
6 ards when none have been set.

7 I conclude therefore that
8 the Boards then maybe improperly constituted without
9 water quality standards to issue licences or authori-
10 zations involving the deposit of waste in water.

11 Section 10 also requires that
12 the Board determine that the financial responsibility of
13 the applicant is adequate for the undertaking for
14 which the water will be used.

15 Then after making these
16 determinations the Board may issue a licence with the
17 approval of the Minister of Indian Affairs & Northern
18 Development --

19 THE COMMISSIONER: Will you
20 pause there? Why do you say that the Boards are
21 improperly constituted? It may be that the licences
22 they issue, their determination as to priorities are
23 challengeable, but why would the Boards be improperly
24 constituted? Have I missed something here? Their
25 appointments would be --

26 A Oh, there's no question
27 that their appointments are valid and in that sense
28 they're properly constituted. I was only trying to
29 make the point that in my view it was possible that
30 they lacked jurisdiction to issue licences for

Thompson, MacLeod, Skinnarland
In Chief

1 authorizations involving the deposit of waste in
2 waters without having had water quality standards
3 prescribed in regulations.

4 Q Well, that doesn't
5 go to the constitution of the Board. It goes to the
6 validity of the decisions they render. This is my --

7 A I think you've stated
8 it more accurately than I have.

9 Q Good.

10 A O.K. In practice the
11 approval of the Minister of Indian Affairs & Northern
12 Development has not been withheld in the case of any
13 recommended licence.

14 The actual practice of con-
15 sidering licences is different between the two
16 territories. In the Yukon the bulk of the work of
17 considering licence conditions is undertaken by a
18 sub-committee of the Water Board. There are three
19 such sub-committees: Hydro-Electric, Mining and
20 Municipal -- and each consists of three or more
21 Water Board members. In the Northwest Territories,
22 the bulk of the work of considering licence conditions
23 is carried out by the Technical Committee, a committee
24 which reports to the Water Board but which is composed
25 of persons each of whom represents one member of the
26 Water Board. The aim of the two systems is to relieve
27 the Water Board members from doing the bulk of the
28 leg work of considering licence conditions. The power
29 to make a final decision remains with the Water Board.

30 The Northwest Territories Board

Thompson, MacLeod, Skinnarland
In Chief

1 has taken an average of two years to consider a licence
2 application and make a decision. To date, only three
3 licences have been issued in the Northwest Territories
4 while approximately six have been issued in the
5 Yukon.

6 The actual detailed
7 procedures followed by the sub-committees in the Yukon
8 and by the Technical Committee in the Northwest Terri-
9 tories are reviewed in Chapter 3 of my study. I would
10 only point out that the current practice of meetings
11 of these committees in camera with applicants for
12 water licences seems to violate natural justice and
13 should not be continued.

14 The practice followed in
15 giving public notice and in holding hearings under
16 the Act is discussed in Chapter 2 of my study.

17 MR. EVANS: Would you please
18 explain how authorizations are granted?

19 A To obtain an authoriza-
20 tion to use water without a licence, a prospective
21 water user submits an application just as for a licence,
22 detailing the basic information about his project,
23 using Schedule 2 of the regulations. Guidelines have
24 been issued with respect to each kind of project
25 specifying information required for an application.
26 An applicant must also submit further information
27 according to the requirements of questionnaires that
28 are provided. Then the controller of water rights
29 determines if the project must be licenced or may be
30 authorized pursuant to Section 11 of the regulations.

Thompson, MacLeod, Skinnarland
In Chief

1 As a rule, the authorization procedure is fairly
2 expeditious. Authorizations get a priority in practice
3 over licences, as the pressure for immediate action
4 by applicants is strong. An attempt is made to
5 give each application a thorough scrutiny by DINA
6 water staff in the north. But only occasionally at
7 the water section's request is any other department
8 consulted. There is no debate at the Water Board of
9 authorizations unless objection is taken by another
10 department to a particular authorization. In the
11 usual case the authorization is issued before there is
12 knowledge of it by the Water Board members. The only
13 Water Board control is through guidelines for the
14 controller as to the appropriate conditions for
15 authorizing different kinds of projects.

16 Q Could you please
17 explain to the Commissioner which water uses require
18 water licences under the Act, and more particularly,
19 which pipeline construction water uses would require
20 a water licence?

21 A No pipelines have been
22 constructed in the north since the Northern Inland
23 Waters Act came into effect, so there are no precedents
24 for supervising pipeline construction under the Act.
25 The last pipeline built was the Pointed Mountain
26 Natural Gas Pipeline, constructed by Westcoast
27 Transmission Co. Ltd. It was a short pipeline
28 constructed in the winter of 1971-72 connecting the
29 Pointed Mountain natural gas field, which is close to
30 the B.C. border, with Westcoast's southern system.

Thompson, MacLeod, Skinnarland
In Chief

One must turn to the Act and Regulations then to determine which uses must be licensed and which can be authorized pursuant to the regulations. Section 26 (g) of the Act provides for regulations that may authorize the use of water without a licence. It states, the Governor in Council may make regulations authorizing the use without a licence of waters within a water management area;

1. For a use, uses or class of uses specified in the regulations.
2. In a quantity or at a rate not in excess of a quantity or rate specified in the regulations or;
3. For a use, uses or class of uses specified in the regulations and in a quantity or at a rate not in excess of a quantity or rate specified therein.

Regulation 11 as amended, made pursuant to this section indicates the conditions under which the use of water may be approved without a licence.

Water may be used without a licence having been issued if the Controller has stated in writing that he is satisfied that the proposed use would meet the applicable requirement of subsection 10(1) of the Act if an application described in that section for that use were made and:

- (a) the proposed use is:
 - (1) For municipal purposes by an unincorporated settlement or,
 - (2) For water engineering purposes.

Thompson, MacLeod, Skinnarland
In Chief

(b) The proposed use will continue for a period of less than 270 days, or

(c) The quantity proposed to be used is less than 50,000 gallons per day.

Under Regulation 11, assuming for a moment its validity, most if not all of the various uses of water during pipeline construction can be authorized pursuant to the regulations, instead of being licensed under the Act. River and stream crossings would seem to constitute a use for water engineering purposes being "(ii) the laying, placing, building or erecting of any structure, device or contrivance in, over, under or upon any waters, that's as defined in regulations. Camp uses for domestic purposes may be authorized as they constitute a use for municipal purposes by an unincorporated settlement."

Ditch-flooding may be authorized where the quantity proposed to be used is less than 50,000 gallons per day. Arctic Gas Responses to Pipeline Application Assessment Group requests for supplementary information which I'll refer to as responses has indicated that their use of water, as Arctic Gas, for these purposes will constitute the use of no more than 16,300 gallons per day on one spread.

Docks and dredging operations associated with pipeline construction constitute a use for water engineering purposes under regulation 5 (k) as revised and can be authorized under Regulation 11.

The use of water in static field pipe testing can be authorized under Regulation 11

Thompson, MacLeod, Skinnarland,
In Chief

(b) as a use for a period of less than 270 days, or under regulation 11 (c) if the quantity to be used is less than 50,000 gallons per day. The applicant plans to do the field pipe testing over a period of one month for each spread according to responses, pages 52-1 to 52-4 if those spreads can be taken as typical. Thus they can be authorized under the 270 day limit. The data that the applicant submitted shows that a total of 40,000 barrels or 1.4 million gallons will be needed for pipeline testing during winter construction on one spread. Over 30 days, this averages out at 46,000 gallons per day.

This data was challenged by the calculations of the Pipeline Assessment Group, which in its Assessment, November 1974, page 275, calculates that assuming the testing is done in 10 mile sections, 3.9 million gallons of test fluid would be required. On that spread about a quarter of the test fluid will be methanol. Under this group's calculations the average use per day would be clearly greater than 50,000 gallons per day.

Overall, the building of snow and ice roads will use more water than any other use associated with the pipeline. On northern spreads, it will involve perhaps 3/4 of the water consumed. That's according to Responses, page 52-1.

The use of water for these purposes would be for less than 270 days and could be authorized under that provision. The data submitted by Arctic Gas indicates that about 10,310 barrels of

Thompson, MacLeod, Skinnarland
In Chief

1 water per day or at 35 gallons per barrel, around
2 360,000 gallons per day will be required for this use.

3 Though these figures are based
4 on assumptions of a late winter with little snow, it is
5 clear that there is little prospect of coming within
6 the allowable limit of 50,000 gallons per day.

7 Snow harvesting for snow roads
8 from northern lands proposed by the applicants is appar-
9 ently not covered by the Northern Inland Waters Act,
10 which defines waters as "waters in any river, stream
11 lake or other body of inland water on the surface or
12 underground in the Yukon Territory or the Northwest
13 Territories. Thus, snow harvesting from the ice surface
14 of Northern lakes though would seem to be covered by
15 the Act.

16 Diversion diking, that is,
17 building dikes to divert water to protect terrain as
18 contemplated by the applicants, is not covered by the
19 Act for similar reasons, ~~that~~ to be covered a diversion
20 of water must be a diversion from a water course.

21 As a result, it can be seen
22 that all the water uses associated with the pipeline
23 can be authorized pursuant to the regulations, or are
24 exempt from the application of the Act.

25 Q In your opinion, would
26 it be preferable to licence certain water uses during
27 pipeline construction rather than authorize those uses
28 pursuant to the Regulations?

29 A Whether pipeline water
30 uses should be licenced or authorized under the Act,

Thompson, MacLeod, Skinnarland
In Chief

largely turns on the issue of the need for and the practicality of public notice and public hearings, as required in granting a water licence. Clearly it would be impractical to require that every separate water use such as every stream crossing be licensed. The hearing requirements would be unworkable, but the public notice and the licensing hearing would seem to be desirable in the case of the more important pipeline water uses. Further public hearings may be useful in the event of revised or more detailed plans by the pipeline company as to their water uses. Other issues than the many issues raised in the Mackenzie Valley Pipeline Inquiry may yet surface, and people who have a special interest in water uses, water issues, may find the licensing hearings a useful forum.

In reviewing the various water uses associated with the pipeline and whether they ought to be licensed, the following factors, should, in my opinion, be considered.

1. The physical magnitude of the particular water use.
2. The possibility and the magnitude of adverse affects on the environment and local people.
3. The need for detailed information available only in the final design stages of the pipeline planning before the impact of the water use can be properly assessed.
4. Whether there are changes in the construction plans relating to the water use from those explained for the Mackenzie Valley Pipeline

Thompson, MacLeod, Skinnerland
In Chief

Applying these factors in the light of the major water uses associated with the pipeline, I would tentatively suggest that major river crossings, fuel pipe testing where methanol is to be used in the test fluid and then disposed of, and the use of snow and ice roads in areas where water is relatively scarce, for example, the North Slope of the Yukon, all be subject to licensing.

Minor stream crossings, ditch flooding operations, small camp uses, water use for snow and ice roads where water is plentiful, for example, near the Mackenzie River, could perhaps unobjectionably be authorized without a license.

Water use and sewage disposal in the larger camps and field pipe testing where only warm water is used might be borderline cases requiring licensing in some instances. These suggestions could well bear further examination in light of the factors I have just mentioned.

Q Could you please explain the legal difficulties that you foresee with the authorization procedure?

A The legal basis for the current practice of issuing authorizations is, in my opinion, unsound. This seems to derive from the fact that the regulations setting out the powers of authorizations were drafted separately from the Act, and with a different idea of what should be the practice under the Northern Inland Waters Act. The difference in approach taken under the regulations is

Thompson, MacLeod, Skinnarland
In Chief

1 to provide a junior licensing program, instead of clear
2 exceptions from obtaining approvals for minor water
3 uses. The approach taken is not provided for by the
4 Act.

5 Here I'm departing from my
6 text slightly. It is my opinion that a good legal
7 argument can be made that the powers of the Controller
8 of Water Rights to consider the matters referred to
9 in Section 10 (1) of the Act and to impose conditions
10 in authorizations have been improperly sub-delegated
11 by the Governor-in-Council or alternatively by the
12 Water Board. As a result, the conditions imposed in
13 authorization may be invalid, as the power to impose
14 them has not properly been provided for in the Act.

15 I make this argument in some
16 detail in Chapter 4 of my study, indeed in the text
17 that was filed in my evidence.

18 To continue on page 22--

19 THE COMMISSIONER: You say
20 that this junior licensing program is either not
21 contemplated by the statute itself, but if it can be
22 brought within the statute, the delegation of power
23 to the Controller does not include the power to
24 attach conditions.

25 A That's what I was saying,
26 yes.

27 THE COMMISSIONER: Okay.

28 A Section 11 (b) of the
29 regulations which allows authorization of use if it
30 takes less than 270 days may be invalid as well under

Thompson, MacLeod, Skinnarland
In Chief

1 Section 26 (g) of the Act which does not allow for
2 a regulation which merely sets a time limit on the
3 use of water. Yet this is what Regulation 11 (b)
4 purports to do. As the Controllers in practice renew
5 such authorizations, the effect is that uses which are
6 substantial can be carried on indefinitely under these
7 authorizations.

8 Section 11 (d) that allows
9 authorization up to 50,000 gallons per day sets a
10 very high limit for water use without a license.
11 One can get an idea of how high this limit is by
12 visualizing 50,000 gallons of water per day as the
13 amount which could fill a swimming pool 62.5 feet long
14 by 16 feet wide by 8 feet deep and that's each day.

15 One could fill and empty this
16 pool every day indefinitely under an authorization
17 issued under this provision.

18 There are other problems with
19 authorizations. There is in law no statutory right
20 of appeal from the decisions of the Controller on an
21 authorization though, in practice, an appeal is allowed
22 to the Water Board.

23 There is no requirement in the
24 Act or regulations that authorizations must be filed
25 in the Water Register, though they are in fact so
26 registered. A change of policy, however, could end
27 public access to this information.

28 The regulations which require
29 the keeping of records and the filing of reports do not
30 apply to authorizations. The power to pass regulations

Thompson, MacLeod, Skinnarland
In Chief

1 with respect to those holding authorizations is limited
2 by the Act. Regulations with respect to the submission
3 of test portions of waste and the monitoring of water
4 use may apply only for licenses. Conditions attached
5 to authorizations to achieve these purposes may be
6 invalid as I have just discussed.

7 I have had indications from
8 government officials that certain of these legal
9 problems, such as the issue of improper sub-delegation
10 of the Controllers powers, will be remedied in
11 legislation to amend the Northern Inland Waters Act
12 this fall. These problems ought to be remedied before
13 a pipeline is approved.

14 Q Would you please review
15 the various methods used by the government under the
16 Northern Inland Waters Act to enforce compliance with
17 environmental stipulations?

18 A I would first of all
19 mention that I have gone over this question in some
20 detail in Chapter 5 of my study on the Act which has
21 been filed with the Commission.

22 In summary, the chief means
23 for insuring compliance are prosecution resulting in
24 fines, the power to shut operations down, the requirement
25 of security deposits, and a system of ongoing approvals.
26 Inspections by the government and the requirement that
27 reports and test samples of water be submitted also
28 aid in enforcement.

29 Fines under the Act may be
30 up to \$5,000.00 per day of the offence, as under the

Thompson, MacLeod, Skinnarland
In Chief

1 Fisheries Act. In the case of large companies such
2 as a pipeline company, the amount of the fine imposed
3 would be insignificant. The chief deterrent value
4 comes from the adverse publicity that the company faces
5 when it is prosecuted. This adverse publicity in certain
6 cases has led companies to undertake substantial
7 expenditures to prevent further pollution.

8 The power to shut an operation
9 down is the most potent enforcement action that the
10 government has under the Northern Inland Waters Act,
11 as shutting down an operation can be extremely costly.

12 There are various means for
13 shutting an operation down. In the case of a water
14 license, the license may be cancelled by the Water
15 Board, although this requires a hearing. Also, a
16 license may be amended without a hearing and such an
17 amendment may, in effect, make compliance so difficult
18 that a shut-down would be necessary. Finally, formal
19 notification that further water use in violation of the
20 license conditions would be prosecuted to the fullest
21 extent of the law may also bring a shut-down. In the
22 case of authorization, a typical proviso is that the
23 authorization may be cancelled for non-compliance with
24 any of the conditions or requirements of the Act or
25 regulations.

26 The Act also provides for
27 Court ordered shut-downs on convictions for an unlawful
28 use of water, or deposit of waste in water.
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Thompson, MacLeod, Skinnerland
In Chief

1 Security deposits may be
2 required for an applicant for licence to protect
3 against the damaging effects of the use of water
4 and to ensure compliance with the conditions of a
5 licence and regulations. In the Northwest Territories
6 the practice is ~~that~~ security deposits are never
7 required for authorizations, while in the Yukon they
8 sometimes are. Under the regulations, they may be
9 up to \$100,000 or 10% of the capital cost of the
10 project, whichever is the greater. Security deposits
11 are easy to administer and allow considerable pressure
12 to be applied on a water user especially to see that
13 cleanup operations are properly carried out.

14 Ongoing approvals of each
15 step of the project's development related to water
16 use are also very useful.

17 Sections of the Act providing
18 for the appointment and powers of water inspectors
19 and for the taking of water samples are indispensable
20 in the proper enforcement of environmental stipulations.

21 Using all these administrative
22 and legal devices together goes a long way towards
23 successful environmental protection. However, on a
24 project of the scale and complexity of the current
25 pipeline proposals, the further administrative
26 arrangements which are recommended in the testimony of
27 Mr. Einar Skinnerland will be necessary if stipulations
28 relating to water protection are to be successfully
29 enforced. These further administrative arrangements
30 include the establishment of a special pipeline

Thompson, MacLeod, Skinnarland
In Chief

1 authority to co-ordinate the implementation of environ-
2 mental stipulations and the establishment of special
3 procedures which ensure that the stipulations will be
4 executed by the pipeline company. I have had the
5 opportunity to work with Mr. Skinnarland in prepara-
6 tion of his recommendations and I fully endorse them.

7 Q If a special authority
8 were created to regulate pipeline construction, how
9 could the Water Board co-ordinate its efforts with
10 this agency?

11 A The Water Boards and
12 the machinery of water licencing are creatures of the
13 Northern Inland Waters Act. Certain powers of the Water
14 Board cannot be rearranged for the better regulation
15 of the pipeline construction without an Act of Parlia-
16 ment. However, it would seem that effective co-ordin-
17 ation could be achieved by order-in-council.

18 Co-ordination of the ongoing
19 water administration under the Act with the pipeline
20 regulatory authority could be achieved by the
21 appointment of a member of the agency to act as an
22 authorized officer's field representative. This would
23 enable the authorizations to be issued by the pipeline
24 agency authority under the guidelines set by the
25 Water Boards. (I am assuming here that the problems
26 of the sub-delegation of the powers of the controllers
27 are rectified by legislation). As well, authorized
28 officers' field representatives could be designated
29 as water inspectors under the Act.

30 In the case of water licences,

Thompson, MacLeod, Skinnarland
In Chief

1 the granting of the licences would remain with the
2 Water Boards. Final decisions on the water licences
3 would remain with the Water Boards. However, the leg
4 work and detail design review of plans and the formula-
5 tion of recommendations to the Water Board would be done
6 by the pipeline regulatory agency, or as Mr. Skinnar-
7 land has recommended, by a third party contractor
8 working for the pipeline regulatory agency or authority.
9 I'm using the words interchangeably.

10 This arrangement would help
11 to centralize and integrate the environmental regula-
12 tion of the pipeline construction to the largest
13 extent possible without necessitating major legislative
14 changes. By having the majority of the leg work done
15 by the pipeline agency, the staff of the Water Boards
16 would be better able to cope with all of the other
17 applications which can be expected to increase rapidly
18 in number with a commitment to build a pipeline (e.g.
19 in applications for oil and gas drilling). As I have
20 indicated in my study, even with current levels of
21 activity the Water Boards are over-extended in trying
22 to cope with the pressure of applications for author-
23 izations for water use. A pipeline can be expected
24 to have a multiplier effect on applications.

25 Q Finally, do you have
26 any final comments on improving water management to
27 cope with pipeline construction?

28 A I would refer to the
29 conclusions and recommendations of my study on water
30 management in the north and suggest that the improvements

Thompson, MacLeod, Skinnarland
In Chief

1 in the law and practice recommended there be brought
2 into effect before a pipeline is approved. For the
3 level of activity which can be expected with a commit-
4 ment to build a pipeline will pose a severe challenge
5 to the existing water administration.

6 A major theme of my study is
7 that steps should be taken to separate more clearly
8 within the government bureaucracy the powers to protect
9 the environment from the powers of promoting resource
10 and economic development so that justice to environ-
11 mental interests can be seen to be done. At best the
12 powers under the Northern Inland Waters Act, the
13 Territorial Land Use Regulations, and the Arctic Waters
14 Pollution Prevention Act ought to be transferred by Act
15 of Parliament to the Department of the Environment,
16 which has no conflicting responsibilities to promote
17 resource and economic development.

18 Such a step would also have
19 the effect of concentrating in one department most of
20 the legislation relevant to environmental protection
21 in the north. With such a concentration of powers,
22 the situation which now exists where the environmental
23 issues relating to water are considered separately and
24 with different procedures from land use in environmental
25 planning could be ended. For any major pipeline pro-
26 ject such an integrated consideration of the environmen-
27 tal issues is essential. Failing steps to transfer
28 powers under the above Acts to the Department of the
29 Environment, at least a transfer of the powers to
30 implement environmental stipulations to a pipeline

Thompson, MacLeod, Skinnarland
In Chief

1 authority during the construction of the pipeline
2 should be undertaken. Obviously the integration of the
3 implementation and enforcement measures needed for
4 protection of northern water resources with the general
5 arrangements for the supervision of the pipeline
6 construction is highly desirable. It eliminates
7 duplication of effort, conflicts of jurisdiction, and
8 increases the flow of information available to water
9 experts enabling them to plan the implementation of
10 water stipulations more effectively.

11 Thank you, Mr. Commissioner.

12 That is my evidence.

13 MR. EVANS: Mr. Commissioner,
14 since we have completed Mr. MacLeod's evidence in
15 chief, I propose that we move along to Dr. Thompson's
16 evidence in chief, unless you think otherwise.

17 THE COMMISSIONER: Well, let's
18 take a break for a cup of coffee then.

19 MR. EVANS: All right, thank
20 you, Mr. Commissioner.

21 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

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Thompson, MacLeod, Skinnerland
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

(WATER REGULATION IN THE CANADIAN NORTH, W. G.

MACLEOD. C.A.R.C. JULY 1975, MARKED AS EXHIBIT
#867)

THE COMMISSIONER: Okay. Are
we ready to recommence, Mr. Evans?

MR. EVANS: Yes Mr. Commissioner.
I have -- before we did commence I was going to point
out that I've asked Miss Hutchinson to check and make
sure that Mr. MacLeod's study in fact, has been filed.
If not, I have a copy which I will file before we
leave, so that you can refer to it as needed.

Next I'd like to lead the
evidence of Dr. Andrew Thompson. He's been qualified
before the Commission before and given evidence two
or three times I believe and I would ask him just to
read his prepared testimony. Dr. Thompson.

WITNESS THOMPSON: Thank you.

Mr. Commissioner, at the time
I was last qualified, I think I was Chairman of the
British Columbia Energy Commission. I might mention
that I've now resigned from that position and have
returned to the Faculty of Law at the University of
British Columbia. Relative to the subject matter of
this panel, I was a member of the Advisory Committee
formed by the Minister of Indian Affairs and Northern
Development in 1970 to assist the Department in initiating
a system of land use controls for northern Canada.
After the many meetings of that Advisory Committee, I
was hired by the Department to assist William Armstrong

Thompson, MacLeod, Skinnarland
In Chief

1 who was then a senior official in the Water, Lands and
2 Forests. In the drafting of the land use regulations
3 which were subsequently further revised and promulgated
4 as the Territorial Land Use Regulations SOR/71-580.
5 Since these regulations came in force, the Canadian
6 Arctic Resources Committee has tried to monitor their
7 effectiveness and has commissioned a number of studies
8 two of which I refer to. A book by Kenneth Beauchamp,
9 entitled, "Land Management in the Canadian North", pub-
10 lished this year and an article by Beakhust and Usher,
11 entitled "Land Regulation in the Canadian North", which
12 CARC published in 1973.

13 I have written a number of
14 articles that have been published in law journals about
15 environmental enforcement and those are listed.

16 As Chairman of the British
17 Columbia Energy Commission of 1974 and 1975, I had
18 the responsibility to follow through to completion the
19 construction of the East Kootenday Link Natural Gas
20 Pipeline. A 12 inch line traversing some one hundred
21 miles across southeastern British Columbia. This
22 pipeline of course was not of a scale of a northern
23 natural gas pipeline, nor is the terrain comparable to
24 that which the northern pipeline will traverse, but
25 I think that the institutional problems related to
26 implementing environmental stipulations would not be
27 altogether unlike those which would be faced in northern
28 Canada.

29 In presenting this panel,
30 CARC was concerned that the material might almost sound

Thompson, MacLeod, Skinnarland
In Chief

1 as if the panel were panelled by the applicant rather
2 than CARC and we wanted to register a disclaimer which
3 I now formally do. And the disclaimer is that in
4 dealing with this subject we are not to be taken as
5 advocating the natural gas pipeline at this point, and
6 the first assumption then is that, it has been decided
7 that a pipeline is in the public interest and authority
8 had been given for it to proceed, and that's a hypo-
9 thetical assumption. Our overall position will be
10 presented to the Inquiry at the summing up which begins
11 shortly.

12 The second assumption, is that
13 the basic requirements for environmental protection
14 have been identified and they've been defined in con-
15 siderable detail in a set of stipulations for the
16 construction of the pipeline and of its related facilities.
17 It is assumed that these stipulations will have covered
18 not only activities within the pipeline right-of-way
19 to be issued by the Department of Indian and Northern
20 Affairs, but also the related activities taking place
21 off the right-of-way, such as construction camps, supply
22 depots, burrow pits, access road, et cetera. These
23 stipulations will have emerged from this Inquiry, from
24 the National Energy Board hearings, and from the studies
25 of the applicants and their contractors, and of various
26 government departments, both in Ottawa and in Yellow-
27 knife, and they will have been written into, a variety
28 of regulations, licences and agreements.

29 The third assumption is that
30 native people own a substantial part of the lands which

Thompson, MacLeod, Skinnarland
In Chief

1 will be subject to the pipeline right-of-way. CARC's
2 position from the beginning has been that no pipeline
3 should be built until the native land claims have been
4 settled. Under such a settlement, the likelihood is
5 that the pipeline will cross lands which have been
6 allocated as native lands, at least as to surface uses.
7 But if the **pipeline** proceeds even though a settlement
8 has not been reached, then all of the lands needed for
9 the pipeline must be regarded as potentially subject
10 to native surface uses. At this time, we do not assume
11 to define native rights beyond saying, that they would
12 be recognized by law and would include rights of use
13 and occupation which would be inconsistent with use of
14 the land for pipeline right-of-way and for related
15 activities. The important implication is that these
16 native land use rights would have to be acquired for
17 pipeline purposes either by purchase from the native
18 associations or groups or communities or by expropria-
19 tion.

20 In his testimony, Mr. Skinnar-
21 land describes what he believes to be the essential
22 requirements if there is to be an effective imple-
23 mentation in construction practices of the stipulations
24 which are laid down for protection of the environment.
25 From my personal experience, I am of the opinion, that
26 Mr. Skinnarland correctly identified the necessary
27 steps in the process.

28 THE COMMISSIONER: Maybe, you
29 could pull the microphone closer to you, Dr. Thompson.

30 A Much of the effort of

Thompson, MacLeod, Skinnarland
In Chief

1 this Inquiry will have been lost if carefully defined
2 environmental protection requirements are not intro-
3 duced step by step through the procedures of design,
4 preparation of contracts, planning and scheduling of
5 operations and supervising and reviewing of results
6 in the field.

7 It's not enough merely to
8 write these stipulations into the terms of right-of-way
9 agreements or land use permits or water licenses or
10 regulations such as the Territorial Land Use Regulations
11 or the Gas Pipeline Regulations. If government assumes
12 that its responsibility stops at this point, of pre-
13 scribing environmental do's and don'ts, it will be
14 relying totally on contractors to determine the degree
15 to which they will bend their efforts to ensure full
16 compliance. The extent to which contractors impose
17 these restraints on their subcontractors, and the extent
18 to which operating crews are trained and mandated to
19 carry out environmental protection procedures, will go
20 virtually unsupervised. The exigencies of pipelining
21 in difficult conditions within a tight time schedule
22 allow no leeway for corrective measures. Effective
23 implementation of environmental stipulations will, in
24 my opinion, be attained only if requirements are
25 viewed from the beginning as an integral part of the
26 construction scheduling and operations not something
27 imposed from outside.

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Thompson, MacLeod, Skinnarland
In Chief

THE COMMISSIONER: Mr. Steeves
and Mr. MacLachlan, you might consider that passage
that Dr. Thompson just read because it seems to me
it lies at the heart of this whole question of enforce-
ment and you might in final argument next month let me
know the position you take with respect to that proposal.

Carry on.

A These environmental
stipulations can become an integral part of the
construction process only if they are consolidated
and incorporated under supervision into all the
advanced planning and are written into all the con-
tract documents so that each contractor, sub-contractor
and operator in the field will know in advance what
is required of him and will have had the opportunity
to plan to meet the stipulations and to cover their
costs. Only if these stipulations are collected
from all sources, written into the contracts in express
terms, and allowed for in the costs of the contracts
is there a reasonable possibility that they will be
complied with routinely and conscientiously. Even
then, there will have to be competent and effective
inspection to take care of unanticipated situations
and attempts to cut corners.

This is the design review
process described by Mr. Skinnarland. I believe it to
be absolutely essential. The inputs of all govern-
ment departments who have a say, as well as the
requirements specified by this Inquiry and by the
National Energy Board must all be reviewed. In the

Thompson, MacLeod, Skinnarland
In Chief

case of the East Kootenay link, as an example, there were full public hearings, including a review of environmental impact assessment studies, a certificate of public convenience and necessity was issued, and the various affected provincial agencies were notified throughout with detailed schedules of the proposed operations. Nevertheless, it was not until the pipeline spread was within a day or two of reaching a particular watershed that Fish and Wildlife personnel became conscious of the impact which the construction operation would have on a particular spawning bed and fish habitat. Delay while the Fish and Wildlife personnel debated what should be done was costly and in the event it was obviously too late for the kind of measures to be taken which these personnel now advocated. Their response as to why they had not made their position known earlier was entirely a reasonable one. At the time when they should have been reviewing the pipeline application and deciding on the specific restraints to be applied in this particular watershed, their personnel were engaged on other projects which had priority at the time. They simply had not been in a position to make a timely response to this particular engineering project. Had a formal design review process been utilized, this failure in co-ordination and timing would not have occurred because all departments would have been alerted that the design review stage was the last chance to influence the carrying out of the project.

Engaging a third party

Thompson, MacLeod, Skinnarland
In Chief

1 contractor to carry out the design review and follow-
2 through is the answer to government agency personnel who
3 have a host of other activities to regulate and
4 who will argue that the execution of their day to day
5 responsibilities should not be sacrificed to the
6 requirements of one particular project. Further, it
7 is not desirable to build up the permanent bureaucracy
3 to deal with a project that is massive in scope for
9 a short period of time.

10 The pipelining operations
11 will affect the land, its plant and animal life, and
12 the people who live there, not just along the right-of-
13 way but along a broad corridor including the river
14 transportation system and the delta where the gathering
15 lines and processing plants for the natural gas will
16 be constructed. It's helpful to begin a consideration
17 of institutional problems by defining in a broad sense
18 the parties who will be most affected.

19 There is, of course, the
20 Federal Government, which through the Department of
21 Indian & Northern Affairs, has political responsibility
22 for and legal jurisdiction over most of the lands.

23 Possibly some Commissioner's lands will be crossed
24 by the pipeline. These lands, which mainly surround
25 existing settlements, are the responsibility of the
26 Commissioner of the Northwest Territories who is
27 guided by the Territorial Council and its Executive
28 Committee, and answerable to the Minister of Indian
29 & Northern Affairs. As a matter of policy, these lands
30 have been treated as if they were the equivalent

Thompson, MacLeod, Skinnarland
In Chief

1 of provincial Crown lands in Southern Canada. While
2 not nearly so extensive in area, they would be
3 equivalent in status to the public lands owned by the
4 State of Alaska in the case of the Alaska Oil Pipeline.
5 Right-of-way over these lands in the Territories
6 would require the concurrence of the Commissioner.
7 The process is described in "Land Management in the
8 Canadian North" by Beauchamp, pages 7 to 9.

9 On the assumption I've stated
10 that native people have a legal right to surface use
11 and occupation of substantial parts of the lands, they
12 might be regarded as falling into the category under
13 existing institutions of a private person whose land
14 is sought to be acquired for a pipeline right-of-way.
15 But considering the common property concepts of native
16 people in Canada, it is more appropriate, in my opinion,
17 to regard their right as one held in common by the
18 community.

19 In broad terms, the institu-
20 tional situation can be summarized as one where the
21 Federal Government, represented mainly by the Depart-
22 ment of Indian & Northern Affairs, has legislative,
23 political and legal authority with respect to the
24 lands affected by the pipeline, the Commissioner and
25 the Territorial Government have political and adminis-
26 trative authority over some of the lands to be affected
27 by the pipeline, and the native communities will have
28 ownership rights with respect to substantial portions
29 of the lands required for right-of-way or other
30 operations connected with the pipeline. Individual

Thompson, MacLeod, Skinnerland
In Chief

1 residents in the towns and villages, whether native
2 or non-native, have obvious interests in the pipeline
3 but in general they have no legal or administrative
4 rights with respect to the affected lands other than
5 in a few isolated cases where operations may infringe
6 on privately owned lands.

7 Now the case that we are
8 making is that the environmental stipulations must be
9 integrated into the planning processes and contractual
10 arrangements for the pipeline. Only the successful
11 pipeline applicant can ensure that the necessary
12 steps are taken. It is the applicant who will be
13 completing the design and specifications and will be
14 entering into contracts with the prime contractors.
15 Therefore, the duty to take these steps must be imposed
16 on the pipeline applicant. There are a number of ways
17 in which this can be accomplished.

18 Environmental stipulations
19 can be legislated through regulations such as the Gas
20 Pipeline Regulations promulgated under the National
21 Energy Board Act. Mr. Skinnerland made mention of
22 those regulations. They can be made binding
23 requirements through the administrative process whereby
24 terms and conditions are imposed in a certificate of
25 public convenience and necessity/^{such as} issued by the National
26 Energy Board, or a land use permit issued under the
27 Territorial Land Use Regulations. Finally, environ-
28 mental stipulations can be incorporated as terms and
29 conditions of an agreement between the landowner and
30 the pipeline applicant for right-of-way or other use

Thompson, MacLeod, Skinnarland
In Chief

1 of land. I might mention that the agreement made
2 between Her Majesty and Westcoast Transmission
3 Company Limited covering right-of-way for the Pointed
4 Mountain Pipeline contained what would be the
5 equivalent of an environmental code with respect to
6 that pipeline operation. These means of imposing
7 environmen tal stipulations are not mutually exclusive.
8 It is not unusual for there to be considerable
9 overlapping of requirements, with all three methods
10 being used at the same time.
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The trick is to combine responsibility for all these functions under a single authority, assisted by a third party contractor, so as to provide through a design review process and follow-up the most efficient implementation possible of all the environmental stipulations that will be identified and defined through this Inquiry and that of the National Energy Board and other contributing agencies. In addition, this concern for environmental protection must march hand in hand with two other vital concerns respecting the pipeline; that it operate with engineering efficiency and safety, and that it be a reliable and economic transportation system. These latter concerns are particularly the responsibility of the National Energy Board under its statute.

Although we are advocating a unified implementation authority, we recognize that several elements in the mix will likely insist on

Thompson, MacLeod, Skinnarland
In Chief

maintaining their separate identities and responsibilities and all we can say is that this tendency should be resisted as far as possible.

The National Energy Board has a statutory mandate to regulate pipelines from the points of view of engineering, safety, and efficiency of transportation systems. These are its core concerns. Therefore, the National Energy Board engineering staff must be integrated with the implementation authority so as to deal with these concerns. In this way, the Board can discharge its statutory mandate with respect to the Mackenzie Valley natural gas pipeline in the same fashion as it does for any other large natural gas pipeline constructed elsewhere in Canada.

The unique aspect of the Mackenzie Valley natural gas pipeline is its location in northern Canada. It is the geography of the pipeline that entails special environmental and social problems. It's also the geography that brings the project into conflict with unresolved native land claims. The National Energy Board has no particular mandate to deal with these issues, nor has it much in the way of past experience or special competence with respect to them. To the contrary, the quasi-judicial nature of the Board and its necessity of following strict procedural rules with formal hearings and appeals militates against its suitability as an efficient administrative machinery for purposes of implementation.

Consequently, we are of the view that an implementation authority should be established

Thompson, MacLeod, Skinnarland
In Chief

1 independently of the National Energy Board, but with a
2 structure that ensures integration of the Board's
3 supervisory functions with the work of the authority.

4 Most people agree that a system
5 of land use planning is sorely needed in northern
6 Canada. A land planning commission is advocated by
7 Beauchamp in the book "Land Management in the Canadian
8 North, CARC, 1976", and by John K. Naysmith of the
9 Northern Policy and Program Planning Branch of the
10 Department of Indian and Northern Affairs in his
11 publication "Land Use and Public Policy in Northern
12 Canada", just recently made available. It is also
13 advocated in Nunavut, the native land claim proposal
14 of the Inuit Tapirisat of Canada.

15 It is the absence of
16 established planning capabilities in the North that
17 has given this Inquiry such prominence in the minds
18 of Canadians, in my view. This Inquiry is laying the
19 ground work for the evolution of planning procedures,
20 particularly at the regional level in the North, with
21 emphasis on the need of involving local residents,
22 especially those of native origin. But just as this
23 Inquiry was needed as an ad hoc substitute for
24 established planning procedures, so is an ad hoc
25 implementation authority required as a substitute for
26 established supervisory capabilities.

27 There simply is insufficient
28 time for the development of permanent institutions,
29 particularly at the regional level, capable of dealing
30 with a project so massive as the building of the Mackenzie

Thompson, MacLeod, Skinnarland
In Chief

Valley natural gas pipeline.

This analysis simply makes the point once again that the pace of resource development imposed by the needs of southern Canadians is far outstripping the development of social and political institutions in the North. In our view, an ad hoc implementation authority with a purely temporary mandate will be least harmful to these institutions.

Nevertheless, we recognize the dilemma that efficient management of the pipeline from an environmental point of view requires a unified, authoritarian agency fully empowered to represent all Federal and regional government interests and the interests of natives and non-natives in the region and fully capable and swift and speedy response as problems arise but, on the other hand, that the continued healthy growth of regional social and political institutions requires that management of the pipeline impact be responsive to these fledgling institutions with all the inefficiencies and delays that are inherent therein. Obviously, both of these incompatible goals cannot be achieved and they must be compromised.

We think the compromise has to be based on a realistic appreciation that once a pipeline has been given the go-ahead, a chain of events will have been set in motion which cannot be arrested and will be incapable of responding to demands for change except in matters of extreme importance to the viability of the project itself. The significant input on the part of regional institutions and I should

Thompson, MacLeod, Skinnarland
In Chief

add, I guess, regional population, native associations and what not will have already occurred through this Inquiry and the National Energy Board and any other inquiry in advance of construction.

In my opinion, once construction begins, there will be no way in which government officials, communities or individuals will be able to participate effectively in planning decisions as to the specific impacts of the project. They will have to accept the implementation authority as their representative in these decisions. At this stage, any system of interaction will have to be more in the nature of a grievance procedure to deal with complaints after the harm has been done.

Only in the most aggravated situations is it likely that a complaint will result in a revision of working procedures or a relocation of operations. Even a complaint procedure will be unsatisfactory, in my opinion, if it's not supported by an official ombudsman.

I now wish to state my recommendations:

1. There must a design review process whereby the pipeline applicant is required to submit his pipeline design, his construction schedule, his material specifications, and his contract documentation for review by an implementation authority which will ensure that all environmental stipulations have been integrated therein.
2. This authority must also have full jurisdiction

Thompson, MacLeod, Skinnarland
In Chief

1 over the entire construction process on and off
2 the pipeline right-of-way to ensure compliance
3 with all environmental stipulations.
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Thompson, MacLeod, Skinnarland
In Chief

The authority should be structured to represent the three parties who will be most affected:

- . The Federal Government
- . The Territorial Government, and
- . The native communities.

We recommend an authority comprised of three individuals, one appointed by each of these parties. The model we have in mind is not the bureaucratic one of an intergovernmental committee with members required to maintain interdepartmental liaison through sub-sets of other committees and to obtain direction from their Ministers and Cabinets, but rather the model of an owner who hires an architect or a supervising engineer to oversee a construction project. The authority we are recommending, in this case, speaks for the land-owners, and they are the Federal Government, the Territorial Government, and the native communities.

The authority would appoint an authorizing officer whose function in the model is equivalent to the architect or supervising engineer -- he's the professional on the job. His relationship to the authority would be akin to that of a chief executive officer to a Board of Directors.

I might stop at this point to refer you, Mr. Commissioner, to the organization chart that Mr. Skinnarland and Mr. MacLeod and myself have agreed on as representing our views and our recommendations. I mentioned before that the authority would appoint an authorizing officer or

Thompson, MacLeod, Skinnarland
In Chief

authorized officer whose function in the model is equivalent to the architect or the supervising engineer. He's the professional on the job. His relationship to the authority would be akin to that of a chief executive officer to a Board of Directors.

The authority would engage a third party contractor as the administrative arm of the authorizing officer. The third party contractor, under the direction of the authorizing officer, would oversee the design review process and the supervision and inspection of the construction process on the right-of-way and of related activities off the right-of-way. So far as is practicable, the third party contractor would have delegated to it the supervising responsibilities of government departments. For example, its employees would be appointed on a temporary basis as resource management officers for the purposes of administering federal regulations such as the Land Use Regulations.

At this point in the deliberations between Mr. Skinnarland and I, I reconsidered my views here and agree with his recommendation, and that is that it shouldn't be the third party's contractors and employees who had delegated to them these supervisory responsibilities. Instead, the authorized officer should have field representatives who might be seconded from the federal and territorial civil service, for example, and these men would have reposed in them by official Act the responsibilities of supervising officers such as resource management officers or inspectors

Thompson, MacLeod, Skinnarland
In Chief

1 under the Northern Inland Waters Act and these
2 field representatives of the authorized officer
3 would call on the third party contractor for services
4 for backup in the field of an administrative and
5 technical nature.

6 The discharge by the National
7 Energy Board staff of their supervisory functions over
8 pipeline engineering, safety and efficiency would be
9 co-ordinated with the staff work of the third party
10 contractor and the authorizing officer by establishing
11 linkages from the very top. One way this could be
12 accomplished would be to have the chairman of the
13 National Energy Board appoint a member of the Board
14 to sit on the implementation authority as a non-voting
15 member. The aim would be that the design review,
16 which the staff of the National Energy Board must
17 carry out under their Act and their regulations would
18 be part and parcel of the overall design review carried
19 out by the authorized officer.

20 Because the authorized
21 officer and the third party contractor are agents of
22 an authority representing the three landowners --
23 the Federal Government, the Territorial Government and
24 the native communities -- they must establish effective
25 liaison with these parties. In the case of the two
26 governments, the problem is probably going to be avoid
27 excessive pressure from particular agencies. In the
28 case of the native communities, the problem will be
29 to establish an effective form of communication, and
30 for this purpose a third party contractor could enter

Thompson, MacLeod, Skinnarland
In Chief

1 into contracts with the village communities, whereby
2 these would provide the services of individuals to
3 act as consultants to the third party contractor. While
4 time constraints would prevent these individuals from
5 carrying out extensive consultation procedures with the
6 people in the communities, the fact that they were hired
7 by the communities under contracts with the third
8 party contractor would at least clearly establish the
9 fact that they were the spokesmen for the communities
10 and not simply servants or employees of the contractor.

11 The limited consultation which
12 the staff of the third party contractor can carry out
13 with the representatives of the native communities
14 would not displace the need for an ombudsman to deal
15 with complaints and to assist individuals, both natives
16 and non-natives, in obtaining remedies for injuries or
17 damages caused them by the construction operation or
18 the related activities. The need for an ombudsman has
19 already been presented to this Inquiry. I refer to one
20 submission by Alan Moyes on behalf of the West Coast
21 Environmental Law Association; his submission was
22 entitled:

23 "The Environmental Watchdog: A Mechanism
24 for Involving the Public in the Mackenzie
25 Valley."

26 In my opinion, the ombudsman would be answerable directly
27 to the Parliament of Canada and fully empowered to
28 obtain information and to report to the public. His
29 role would likely continue well beyond the construction
30 period and after the authorized officer and the third

Thompson, MacLeod, Skinnarland
Chief

1 party contractor had been discharged because some
2 injuries and damages and claims will not come to the
3 surface immediately.

4 The ombudsman could be
5 assisted by an Advisory Committee representing many
6 different interests such as native organizations and
7 environmental groups and government departments who
8 would contribute advice to the ombudsman and disseminate
9 information to the public.

10 The implementation authority
11 and the ombudsman involve costly services, but in no
12 wise disproportionate to the cost of the pipeline,
13 These services should be paid for by a levy on the
14 successful pipeline applicant who, in turn, would re-
15 cover these payments by including them in the cost of
16 service of the pipeline for rate-making purposes.

Thompson, MacLeod, Skinnerland
In Chief

1 In conclusion, I'm compelled
2 to say that the proposals outlined herein are merely
3 an attempt to find a compromise between incompatible
4 goals should the pipeline be authorized. These proposals,
5 in my view, in no way respond to the expressed concerns
6 of the native people in communities about sharing in the
7 planning of the specific pipeline activities which will
8 affect their daily lives.

9 These proposals in no way
10 contribute to the slow and difficult process of evolving
11 via both social and political institutions for the North.
12 The most that can be said for them is that they result
13 in efficient management of the pipeline so far as it's
14 possible to minimize environmental impacts and they're
15 designed to contribute the least harm to the development
16 of regional, social and political institutions. Thank
17 you.

18 MR. EVANS: Mr. Commissioner,
19 I might add that the submission referred to by Dr.
20 Thompson by Alan Moyes was submitted at the community
21 hearings in Vancouver in May of this year. Also, that
22 the papers he referred to by Beauchamp and Beakhust and
23 Usher have both been filed with the Commission. That
24 completes the Evidence in Chief of this panel and--

25 THE COMMISSIONER: Could I
26 ask whether it is your view that this authority's
27 jurisdiction over pipeline construction and the
28 enforcement of environmental stipulations should encompass
29 the whole of the pipeline within Canada, not just north
30 of sixty? I'm just concerned about north of sixty

Thompson, MacLeod, Skinnarland
In Chief

1 myself but I'm curious whether you've addressed this
2 question.

3 A I hadn't addressed the
4 question. I suppose it shows how much we get focused
5 on. This is a northern pipeline. We forget that it
6 has to go below the sixtieth parallel as well as start
7 above it. The same case can be made, although you
8 would get more of an argument from people in the
9 Government of Alberta who would argue that they have
10 adequate staff and enforcement capabilities to be
11 able to administer right-of-way over Alberta Provincial
12 Crown Lands according to their own precepts and there
13 would be some justification in that case. It's simply
14 that government institutions up here are not as fully
15 developed as they are in the South.

16 Q What about the National
17 Energy Board? They have south of sixty under their
18 statute jurisdiction over these matters that relate
19 to the integrity and safety and so on of the pipeline
20 and under their statute, they have a virtually unlimited
21 mandate that depends simply upon their own conception
22 of what the public interest implies.

23 If you did what Mr. Skinnarland
24 sought to do in the first instance and conferred the
25 faculties of all Federal departments upon the Energy
26 Board, you would escape in southern Canada--I don't
27 suppose you would escape it and I'm not at all sure
28 it's desirable. But you would at least be--you'd
29 have a unified authority charged with full responsibility
30 for all these questions throughout the route of the

Thompson, MacLeod, Skinnarland
In Chief

1 pipeline within Canada. Well, I guess it's not up to
2 me to worry about that though.

3 A I was going to say that
4 I know that from a provincial point of view that the
5 governments would not expect the National Energy Board
6 as being authority to deal with the environmental and
7 social impacts. In terms of jurisdiction, since these
8 are provincial Crown lands, I think that it's clearly
9 established policy of the National Energy Board in
10 these matters, environmental and social affairs, to
11 co-operate very closely with provincial requirements.
12 I think it's recognition of the fact that there is a
13 regional concern in these areas that leads me to believe
14 that the authority should have as one of its components
15 a representative of the Territorial Government.

16 Q Yes. Well, given the
17 composition of the authority, as you've outlined it,
18 it would have to be confined to north of sixty. So,
19 perhaps we shouldn't pursue that. Mr. Skinnarland,
20 in Alaska, they used this third party contractor idea
21 to supervise the enforcement of environmental
22 stipulations. Is that right?

23 WITNESS SKINNARLAND: Yes,
24 as assistant to the authorized officer and his
25 representatives. In other words, they furnished, for
26 practical purposes, the entire operating staff in the
27 Alaska Pipeline office with the exception of the core
28 staff reporting directly to the authorized officers and
29 those people, they're essentially government career men
30 like the geologists and the biologists and so on which

EXHIBIT 2, B.C.

Thompson, MacLeod, Skinnarland
In Chief

1 I had in this office.

2 Q Well, let me make sure
3 I understand this. If you establish a third party
4 contractor, he needs people with expertise about
5 northern Canada about a whole range of matters. Those
6 people largely exist within the public service of
7 Canada and the two northern territories now. There are
8 some private--

9 MR. SCOTT: It's Northern
10 Engineering Services. I thought maybe they had them
11 in mind.

12 THE COMMISSIONER: Well,
13 Northern Engineering Services is a good example of what
14 I mean because practically everybody else with any
15 expertise has been tied up by the industry. I'm not
16 blaming them for that. The environmental firms are
17 largely tied ^{up} by the industry. This is a fact. So,
18 who's left, unless a group of public servants terminate
19 their employment with the government, set themselves
20 up in Edmonton as some kind of outfit, called into
21 being for the expressed purpose of filling this slot
22 on the left side of the organogram. Do you want to
23 comment on that? Am I making any sense to you?

24 WITNESS THOMPSON: To a
25 certain extent, it's something that concerns us. You
26 know, where do you find the people? One thing I think
27 is that a lot of the people who are now, as you say,
28 tied up in the industry have been tied up during this
29 period of time up to certification and they're going
30 to be looking for employment once the certificate is

Thompson, MacLeod, Skinnarland
In Chief

1 granted and I think there's a substantial pool of
2 people there who would quite gladly shift from preparing
3 impact assessments over to enforcement.

4 Q You're thinking of the
5 Inquiry staff?
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Thompson, MacLeod, Skinnarland
In Chief

1 WITNESS THOMPSON: So there's
2 a pool and there would be people who would leave gov-
3 ernment service, but, I suppose the essential point
4 though, is that such an agency has more flexibility
5 and maybe more capability of drawing together on an
6 adhoc basis. This kind of a group then anybody else
7 does, considering the limited availability of human
8 resources.

9 MR. SKINNARLAND: On that
10 basis, I have to agree, Mr. Commissioner, that it is
11 a problem in Canada, because the resource base in this
12 area is naturally much smaller than it is in the
13 United States. However, if you look at the country
14 as a whole and I will say from the experience I've had
15 working in the various line of construction and execu-
16 tion, I don't think it really is a problem, because
17 you aren't dealing in that tremendously large staff
18 and there is no doubt that in the process between these
19 hearings, the engineering of the pipelines and the
20 National Energy Board Hearings, the oil companies have
21 certainly used a tremendously large number, all the
22 people of expertise from the private industry in these
23 areas. However, if I may mention for example in Alaska,
24 the third party contractor has not as quite a broad
25 base as we have recommended here, but, probably some-
26 what the same. In that case, it was started with a
27 core company which had certain abilities, par-
28 ticularly in this monitoring of government contracts
29 and they added people and one of the chores I had to
30 do was for example, to find people including people

Thompson, MacLeod, Skinnerland
In Chief

1 from Canada, who had no conflict of interest and you
2 will find that a fair portion of the Arctic expertise
3 was actually and permafrost expertise was furnished
4 from Canadian sources, both consulting firms as well
5 as hiring people out of government service and these
6 were strictly professional people who had gone into
7 government service in the interest of studying the
8 north, so that from that point of view, I can't see
9 any particular difficulties and furthermore I don't
10 quite agree that the main part of the scientific and
11 technical expertise on the broader outline exists only
12 within the government departments. I think you'll find
13 that there is probably more expertise between the private
14 consultants and within the academic circles, I think,
15 than there is actually inside a government department.

16 THE COMMISSIONER: Well I was
17 overstating the case. I -- when you sit here for 20
18 months and listen to everyone who knows anything about
19 north come here, you appreciate the broad range of
20 institutions that they -- they come from, but I was
21 concerned that so many of them are tied up with the
22 industry. Quite legitimately and naturally. Mr. MacLeod
23 did you want to put your two bits worth in on this.

24 WITNESS MACLEOD: Well yes,
25 Mr. Commissioner. In discussions I've had with my
26 colleagues at CARC, one idea that came up with regard
27 to this problem was that on the assumption that only
28 one of the pipeline companies is authorized to build
29 a pipeline, that the employees of the other company
30 might very well be available for government employment.

Thompson, MacLeod, Skinnarland
In Chief

1 THE COMMISSIONER: I'll tell
2 you, if Arctic Gas loses, I can tell you, that there
3 will be more -- more supervisors than there will be
4 workers on the pipeline.

5 Let me just ask you about
6 this. One of the problems of enforcement, it seems
7 to me, lies in this. The Government of Canada as
8 the ultimate source of sovereignty in the north holds
9 the ring, it's the umpire in this thing, if that's the
10 right expression. Now, the -- let me just ask you to
11 comment on this.

12 The cost of either project
13 is enormous. Arctic Gases project within Canada would
14 cost 8.4 billion by the most recent estimate, that is
15 excluding the Alaskan system and the lower 48 system,
16 and I don't think it includes the cost of looping the
17 Trans Canada system which would likely be necessary.
18 The Foothills Project is 4.4 billion by the latest
19 estimate, maybe it's more than that, but, that's the
20 last estimate I've heard and now, first of all those
21 estimates, if the experience of the James Bay Project
22 and of the Trans Alaska Project is relived even an
23 immoderate way, these -- the project whichever company
24 builds it, will wind up costing a lot more than it is
25 estimated now that it will cost.

26 Now Mr. Blair of Foothills
27 has made it plain, that if Foothills were given the
28 right-of-way and a certificate of public convenience
29 and necessity, they would ask the Government of Canada
30 to guarnatee repayment of the borrowings, that is,

Thompson, MacLeod, Brannanland
In Chief

1 repayment of the principal and interest of the bonds.
2 Arctic Gas has not said it would ask the Government of
3 Canada to guarantee repayment of the borrowings, but
4 they have said, Mr. Horte, said this at the hearing,
5 that they would ask the Government of Canada to guaran-
6 tee the repayment of the borrowings in excess of a
7 25 percent over -- cost overrun, so that if this thing
8 costs 25 percent more than the current estimate, 8.4
9 percent billion, they will ask the Government of Canada
10 to guarantee repayment of the overrun in excess of
11 25 percent. They will also ask the Government, to
12 guarantee the losses flowing from any interruption of
13 service.

14 Now, if the Government complies
15 and presumably both companies regard those guarantees
16 as essential, to enable them to go to New York and
17 borrow the money to get the thing going. So, if you've
18 thought about the position in which that places the
19 Government of Canada, here you have its creature, the
20 authority, enforcing all these environmental stipula-
21 tions and yet the Government, if it guarantees the
22 project, guarantees the borrowing, -- guarantees re-
23 payment of the borrowing, either fully on the Foothills
24 Project or guarantees the overrun and the losses in-
25 curred on an interruption of service for Arctic Gas.
26 The Government has a financial interest in seeing this
27 pipeline built as quickly as possible, so that you can
28 get your cash flow through and you can start repayment
29 and delay of course, not only postpones the day when
30 you are able to get your cash flow and start repaying

Thompson, MacLeod, Skinnarland
In Chief

1 the borrowings, delay may mean, an increase in terms of
2 the absolute cost of the project and bring, say in the
3 case of Arctic Gas, bring the cost closer and closer
4 to the Government's guarantee. Now, I think this is
5 something that we should be thinking about, but, what
6 are the implications of those matters in terms of the
7 enforcement of environmental stipulations on the pipe-
8 line. Do you wish to comment, if you don't, you don't
9 have to?

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Thompson, MacLeod, Skinnarland
In Chief

1 WITNESS THOMPSON: The model
2 that we have put forward, as I said, is not aimed at
3 simply a committee which would liaise government policy
4 and be therefore simply an expression of government
5 policy which would lead to the conflict of interest
6 situation that you have described. IT may be wishful
7 thinking but what I would foresee would be an Act of
8 Parliam ent which would establish this authority with
9 three representatives who form a Board of Directors,
10 that these individuals would receive their mandate
11 under that Act and their mandate would be to oversee
12 the construction of the pipeline from the point of
13 view of the interests of the landowner whose land is
14 being taken and used for a pipeline, and who has
15 residual land left that will be affected by the
16 construction operation.

17 Q I see.

18 A Now that would be their
19 mandate. I'll have to have a link through Ministers
20 for reporting and other types of administrative
21 arrangement, but they will be an independent authority
22 who once they are appointed under this mandate will
23 represent the Federal Government, the Territorial
24 Government, and native communities.

25 Q Yes. But under your
26 proposal the ultimate authority resides in the
27 Minister and his colleagues, as I suppose it must;
28 but you are really stopping short of investing this
29 authority with the independent powers the other
30 tribunals established under Statute possess. Am I

Thompson, MacLeod, Skinnarland
In Chief

1 making myself clear?

2 A Yes, you are, but all I
3 can say about that is that I haven't at this point
4 addressed my thinking to the precise relationship
5 of this authority to the Minister, but I don't think
6 that it should be simply the kind of relationship that
7 a deputy Minister has to the Minister, which is simply
8 to take orders and to be fully responsive to the
9 Minister in any demand the Minister makes of him; rather
10 there will have to be relationship to the Minister,
11 but there ought to be a mandate for this authority
12 which even the Minister can't say, which is laid down
13 by Parliament.

14 Q Because you see, if
15 Arctic Gas builds the pipeline, you won't just have
16 one government under the authority, you may have two
17 governments pressing the authority and in fact of
18 course in the United States the urgency of delivering
19 gas is far greater, I think, than it is in Canada.
20 That's a subject I don't want to get into, but it's
21 a factor that you have two governments who are saying,
22 "Let's get on with it. What are you trying to
23 protect those muskrats for?"

24 WITNESS SKINNARLAND: May I
25 add something, Mr. Commissioner? I think this is the
26 essence of our way of thinking, that after the pipeline
27 is authorized by whatever procedures whatever governments
28 elect to do this, unless you have built into the very
29 setup of the authorization these provisions for getting
30 as many of the requirements really implemented, you will

Thompson, MacLeod, Skinnarland
In Chief

1 never get it done afterwards because when you start
2 a \$10 billion project, it costs at least \$5 million
3 a day. You could post any bonds or anything to do with \$50
4 million which has been proposed, and that won't stop
5 the pipeline. I think you have a very good example
6 in Alaska right now over this building issue, where
7 again from improper planning, possibly some deficiency
8 in management, something went off the track and invar-
9 iably you are going to have confrontation, I maintain,
10 many times. You cannot afford to stop an Alaska
11 Oil Pipeline any more when it's been started any more than
12 you can afford to stop the Mackenzie Gas Pipeline.
13 Therefore we think that it has to be built into the
14 beginning. The only way you can do this is to get it
15 set down in the rules and likewise, speaking now from
16 the contractor's point of view, the company, if they
17 can deal with one single authority, then they know what
18 the rules of the game are, I think they will do a very
19 good job to get it implemented. But if they are to
20 deal with two authorities or three, well then you're
21 going to get them passing the buck, which everybody
22 can do, and the pipeline is going to move on and
23 you have to pay the penalties afterward.

24 Q The consumers of gas
25 will pay the penalties.

26 A So that the only way
27 you can really discharge this public responsibility
28 is to get it built into the basic requirements and
29 if you look at it, it all hinges along this very thing
30 that it is included in the design criteria and it is

Thompson, MacLeod, Skinnarland
In Chief

which
1 included in the specifications and the contracts under/
2 the contractors and the sub-contractors will work. If
3 it isn't in there, it is too late, because you cannot
4 change your construction plans or your equipment when
5 you are out in the middle of the north. It's too late
6 for that. That decision will probably be made at least
7 12 months, 18 months, maybe two years before.

8 Q All right, that point is
9 well taken and as I suggested earlier, I think the
10 heart of your whole case here and that's why I asked
11 the representatives of the two companies to make sure
12 they let us know in due course whether they agree with
13 that approach. That makes it a lot easier for the
14 Inquiry to frame its recommendations on the subject.

15 One last thing, Mr. Skinnar-
16 land, you were a dam builder for many years, and you're
17 an expert on construction, and if you feel free to
18 comment, please do so; if you don't wish to, that's
19 the end of it. But why do these vast frontier
20 projects appear to cost so much more than original
21 estimates indicated? The Alaska Pipeline was supposed
22 to cost \$900 million and it's going to cost \$7 billion
23 and more, no doubt. 7 billion, I think I said. Well,
24 that's a sevenfold increase, and what about James Bay?
25 I can't remember what it was supposed to cost and I
26 don't know what it's going to cost. You must know, but
27 I'll bet it's three or four times the escalation.
28 Well, is there any factor that you can take, or is
29 there anything that -- what is it that these things
30 have in common that leads to this kind of whatever it

Thompson, MacLeod, Skinnarland
In Chief

1 is? You must have reflected on this, as you've gone
2 around building these things all your life and now
3 you're inspecting them and so on. What is it?
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Thompson, MacLeod, Skinnarland
In Chief

1 A I would like to comment
2 on that. Maybe I should start with the one thing that
3 these particular periods which were dealt with now on
4 these projects we're talking about which are in the
5 early '70's, there has been a considerable higher
6 general inflation. That is certainly not the answer
7 to the question, but we must keep that in mind, while
8 in the 1960's you dealt with a cost increase of maybe
9 three, four percent per year across the table. You
10 certainly are dealing in seven, eights and possibly
11 a little more.

12 But that doesn't answer your
13 question about why does it cost four times, five
14 times and six times. In the terms of the Alaska
15 Oil Pipeline, I agree the original figure when they
16 started head over heels in 1969 probably was nine
17 hundred million dollars. However, with some credit
18 to the people who made that estimate, that didn't
19 include the entire project at that time. They certainly
20 had not looked at the tremendous harbour facilities
21 required in Valdez and all the other things.

22 However, if you look at all
23 these remote area projects which had this tremendous
24 increase from, you can say the feasibility estimates
25 to the actual cost, they had one thing in common and
26 that is they're far away and you're stretching your
27 technology beyond what you did before, from possibly
28 broader fronts than most projects and if you start
29 to take the cost apart, as I think you could see that
30 in these estimates which are before you, both from

Thompson, MacLeod, Skinnarland
In Chief

1 Gas Arctic as well as Foothills; by the time you put
2 the price tag on the logistics, you'll find they become
3 a very, very large part of the cost. If you look at
4 the Alaska Oil Pipeline, the money which is included
5 in building the roads and the airports and getting
6 in there, represents a very, very large portion of it
7 and these are the ones which are underestimated in
8 the process of going in in the areas that you don't
9 know anything about.

10 I think in Alaska, in the
11 north portion, the climate certainly was underestimated.
12 If you take the James Bay project which in its
13 initial announcement, I should say the second one, when
14 they went to the La Grande caused less--

15 Q Sorry. To the what?

16 A To the La Grande River.

17 They say the James Bay Project was first announced
18 from the three southern rivers, the Nottaway, the
19 Broadback and the Rupert, and that was abandoned after
20 one year because there had been no field investigations
21 and there was no chance of building it within the
22 timeframe that they wanted.

23 So, within one year in 1972,
24 it was then moved to the northern system where the
25 foundation conditions in the Shield were more predictable
26 from the general point of view. So, the estimate for
27 that was I think 3.8 million dollars in 1972, but
28 again, it hasn't been really looked at. It was forced
29 overnight. Then another year went along. It became
30 6.3 billion dollars and again, that was just extractions

Thompson, MacLeod, Skinnarland
In Chief

1 from the first one without really having knowledge
2 of what they were going to build because they had
3 just looked at really a small scale map. Then when
4 the first--the following year, in '74, when the
5 first comprehensive estimate was made, it went to
6 eleven billion dollars and I grant some of that
7 reflects the high inflation factors and in the last
8 estimate this year is now up to sixteen billion dollars.

9 Again, if you analyze that
10 cost, you'll find that this is six to seven hundred
11 miles north from you can say the base in Montreal,
12 and some three hundred and fifty, almost four hundred
13 miles from previous road systems. So, that the cost
14 of the logistics and the camps and all the support
15 systems -- again is a very, very large
16 portion of the proposal. This is really then the
17 area where I think you will find that as you go in
18 and make the feasibility study that has neither enough
19 experience between the managers, nor the engineers,
20 nor the estimators and they're forced to table these
21 figures --

22 So, then as you generate the
23 additional information, you come close. Then if you
24 take then possibly this and projecting it to Mackenzie
25 I maybe one of those little--which I'm more optimistic
26 because I do think that the estimates in connection
27 with the Mackenzie Gas Pipeline reflects some of
28 these experiences in the logistics because it all
29 sifts through the industry in one form or another.
30 But, that shouldn't be interpreted. That won't defer

Thompson, MacLeod, Skinnarland
In Chief

1 the cost increases but I don't think they will be quite
2 as drastic as you can say the Alaska Oil Pipeline on
3 James Bay which were started overnight, some estimates
4 were put on the table which didn't really reflect the
5 project which was going to be built.

6 Q I understand that in
7 James Bay but in Alaska, they were going to build this
8 thing back in the late '60's and then through court
9 cases and so on, they were held up. They had purchased
10 the pipe in Japan, so they actually no doubt, saved
11 money on the pipe. So, they must have had three years
12 in there, two or three years to work away at this
13 quietly and didn't they use those three years to
14 advantage or two years or whatever it was? It was a
15 hiatus in there. Did they all just go home and say
16 let's forget it till--

17 A I suppose this is a
18 very complex case but nevertheless, if you look at the
19 documents from the time they were prepared originally,
20 and till really almost to the time that the agreement
21 was signed, there was very little engineering done in
22 the meantime. In other words, it was just about like
23 you cut it off in 1969. At that time, as contractor
24 in Canada, we were involved in a joint venture looking
25 at the plans and I came back and saw them and I started
26 to work on the proposal for the third party contract.

27 So, really there was very
28 little, what can I say, further designed than at that
29 time. Only when the agreement was signed and the
30 legislation then came in, did they go back in full force

Thompson, MacLeod, Skinnarland
In Chief

1 in re-engineering and when you see the tremendous
2 changes from the original in the details; say for
3 example, the complexity in the elevated pipeline when
4 it finally was executed, even though that was not the
5 most expensive, and a lot of the other items, there
6 is no question that really the original plan did not
7 have detailed engineering which would permit the
8 estimator to really put the good base figure on the project.

9 That was certainly the case
10 in James Bay, that there wasn't sufficient information
11 originally to really put the good base figure.
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Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 THE COMMISSIONER: Well, thank
2 you, Mr. Skinnerland. Well, I think that I've probably
3 covered most of the ground counsel intended to cover,
4 but let's see if there are any questions.

5 MR. STEEVES: If you dare.

6 MR. SCOTT: You didn't ask
7 any of mine.

8 MR. EVANS: Mr. Commissioner,
9 I guess in the normal course Mr. Bayly would be first
10 to cross-examine the witnesses.

11 THE COMMISSIONER: Yes, I'm
12 afraid so.

13 MR. EVANS: They are available
14 for him, and the rest of my friends over there.

15 MR. BAYLY: I hadn't even
16 thought of any of those questions, Mr. Commissioner.

17 THE COMMISSIONER: I thought
18 they were good questions.

19 MR. BAYLY: I wasn't going to
20 cross-examine Mr. Skinnerland anyway.

21
22 CROSS-EXAMINATION BY MR. BAYLY:

23 Q Mr. MacLeod, in your
24 study you recommended that steps be taken to make
25 information about water licence applications more
26 readily available to the public. Could you give us
27 briefly recommendations on how this might be accomplished
28 particularly in pipeline construction applications for
29 water licences?

30 WITNESS MACLEOD: Well yes, as

Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 I said in my study, there's a bit of a legal difficulty
2 with the requirements to keep water licence information
3 on file. The provisions in the regulations defining
4 what information should go into the water register,
5 which is open to the public, is very limited. So much
6 limited, in fact, that only the bare outline of what
7 the project is and the amount of water to be used are
8 available as a right in the water register. As a matter
9 of practice, generally speaking studies that have been
10 done with respect to water licence applications or
11 an authorization are on file. As a practical matter
12 for people throughout the Territories, it's often
13 difficult to get information about a project because
14 the water register is located in the Territorial
15 capital in each Territory, and you know, the register
16 is only open during business hours.

17 Some information, major
18 studies for licences are often filed in the public
19 libraries in Whitehorse, I know. I'm not sure if they're
20 filed here in Yellowknife, and this helps to some
21 extent. But to my knowledge, no systematic arrangement
22 for seeing that information goes out to the communities
23 in a form intelligible to the local people has been
24 devised. Now in certain cases I know that the Water
25 Board has made arrangements where they have sent out
26 staff with representatives of the applicant for a
27 licence to make information available. In the case,
28 of course, of this pipeline, so much of this information
29 about the project has already been disseminated through
30 community hearings and through other means; this is a

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 somewhat special case, but as I said in my testimony,
2 I think that perhaps further water issues may come up
3 as peoples' concerns in the communities become more
4 refined or perhaps in response to further changes in
5 the application, and in that case I think it would be
6 a good idea that arrangements be made to see that
7 those studies get out and that people who can explain
8 those studies get out to the communities and make their
9 expertise available, either in a water licence hearing
10 or in some other informal hearing in the communities.

11 Q So you've made two
12 recommendations, really:

- 13 (1) that there be more information available because you
14 say that in the water register there is a limited amount
15 of information, and
16 (2) that it be available in areas other than the
17 capitals of the two Territories, either upon request
18 or as a matter of course.

19 A That's right.

20 Q Now, with regard to the
21 policing of licences or authorizations, is it your
22 opinion that there are sufficient water quality
23 inspectors to supervise either the current level of
24 activities in the north, or the contemplated pipeline
25 construction, or should there be more?

26 A Well, to my knowledge,
27 and this may be slightly out of date now as I haven't
28 checked with the Water Board in recent months, to my
29 last knowledge in the Yukon there are seven water
30 inspectors, that is people designated pursuant to the

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 Act as water inspectors, and in the Northwest
2 Territories there are three.

3 I think the situation is
4 particularly severe in the Northwest Territories in
5 that the three people designated as water inspectors
6 have duties here which keep them mostly in Yellowknife.
7 For example, one of the inspectors is controller of
8 water rights whose duty is to supervise the files
9 with respect to water rights. So he's not available
10 for full-time inspection duties. In fact, I dare
11 say he may not be available at all for inspection
12 duties. So that there is a definite need for the
13 appointment of more water inspectors.

14 Currently the Water Board
15 relies on the staff who are also land use inspectors.
16 They are called resource management officers, I believe,
17 and these personnel, there are more of them, I don't
18 have figures, they are, I think, in the order of a
19 dozen in each Territory, are not trained in water
20 matters and while they can, as I understand it, while
21 they can see certain water problems and bring them
22 to the attention of the Water Board or of the other
23 authorities in the Department of Indian Affairs here,
24 they aren't especially trained to take into account
25 all of the problems that ought to be regulated in
26 water pollution.

27 Finally, there are the
28 fisheries inspectors and National Health & Welfare
29 inspectors who have duties in inspection, but they
30 tend to be limited to the particular concerns of their

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 department -- fisheries or just mere health matters.
2 In short, I think that there is a general need for
3 more inspectors to be appointed.

4 Q What about the Department
5 of the Environm ent? Are the involved in this at all?

6 A In what now?

7 Q In water inspection.

8 A Well --

9 Q You see them taking
10 samples in the bay here sometimes.

11 A -- there are fisheries
12 officers who are generally supervise stream crossings.
13 By an agreement between the Department of Environment
14 and Department of Indian Affairs, although both
15 departments have jurisdiction over the regulation of
16 stream crossings, one under the Fisheries Act and one
17 under the Northern Inland Waters Act, the fisheries
18 officers have, if you will, the overriding jurisdiction
19 to decide if a stream crossing is adequate. For the
20 most part, that's the role of the Department of Environ-
21 ment in water inspections, but there are staff attached
22 to the Environm ental Protection Service who are
23 specially trained biologists or physical scientists
24 who have an expertise which is very valuable in
25 northern water management, in that there is a general
26 shortage of scientists who are water management.
27 They do do some inspections and some water sampling
28 with respect to their particular province they are
29 working on.
30

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 Q Now you told us that on
2 page 15 of your prepared evidence, that a dredging opera-
3 tion might be the subject of a -- of a water license among
4 other things and we have heard recently from the Depart-
5 ment of Transport, that they have a dredging study under-
6 way, the environmental portion of which is being con-
7 ducted by the Department of the Environment. Would you
8 recommend that studies of this kind, that may be the
9 subject of -- of a water license, be either under the
10 control of or direction of the licencing authority, be
11 it the Water Board or whatever authority it may be?

12 A Well, I'm not aware of
13 the particular facts of any proposed dredging.

14 Q I just use that by way of
15 an example and you have mentioned dredging as the subject
16 of the water application.

17 A I know it's a general
18 rule, that when the Department of the Environment under-
19 takes a study of this kind, with respect to a develop-
20 ment project in the north, it does so, giving notice
21 to the other departments on the Water Board, so that
22 the Water Board is apprised to what the Department of
23 the Environment is doing and generally it's an agree-
24 ment is reached say, with the Department of Indian
25 Affairs and the rest of the Water Board, that the
26 Department of Environment will conduct this research
27 and present its findings to the Water Board for its
28 deliberations. This is somewhat normal and because
29 it's done by Department of Environment, is not to say
30 that it isn't sort of done under the auspices of the Water

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 Board.

2 Q Yes. Your concern in that
3 was, that there weren't regulations which in your opinion
4 sufficiently defined what sort of environmental questions
5 or standards should be set by the Water Board under the
6 Northern Inland Waters Act?

7 A Well, right. It's frustr-
8 rating for a person who works for an environmental
9 group or for indeed for a general member of the public
10 to approach environmental issues in a public forum and
11 confront people with very great expertise as many of
12 the applicants and many government officials have and
13 try to evaluate the government proposals, or applicant
14 proposals without regard to any standards that these
15 people have to meet. I mean concrete standards to
16 which you can make reference in saying, well, now
17 this application obviously satisfies these requirements
18 as to environmental safety and in that regard, at least
19 we can put some trust at the right thing as being done.
20 In the current state of things, I'm afraid that the
21 Northern Inland Waters Act and the Northern Inland
22 Waters Regulation provide very little guidelines to
23 the general public to show that. In fact, actions that
24 are being taken and being regulated are meeting en-
25 vironmental standards of any kind. Now I've made par-
26 ticular reference to the absence of water quality stan-
27 dards which I think is not just bad policy not to have
28 water quality standards, but perhaps creating a legal
29 impediment as well, and that's the issue I'd like to --
30 that's one issue I think is very important that the

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

to see
1 government in Northern Canada, take steps/that there
2 are both standards for, in fact I worked with Mr.
3 Skinnarland on this idea, of an environmental code,
4 which I think the Environmental Protection Board re-
5 ferred to, as well in it's evidence, the move towards
6 environmental code for the north, so that you could
7 assess all projects in the light of general require-
8 ments as to the protection of the environment and as
9 well, that there be procedures, standard procedures
10 which are more clearly seen to protect the environment
11 such as rules for the proceedings in Water Board Hearings,
12 which we don't have yet.

13 Q You stated as well, on
14 page 9 that there are no priorities set up for water
15 use under the Regulations or the Act. Having had a
16 look at other legislation, I presume you've done so,
17 can you tell us what kind of priorities are set in
18 other jurisdictions?

19 A No, I'm sorry I -- in
20 my studies I really haven't looked at water legislation
21 in other jurisdictions aside from a reference -- a brief
22 reference to the British Columbia Water Act and Pollution
23 Control Act. The priorities that I take it, the Par-
24 liament had in mind, were for example, to state that
25 in the area near Yellowknife, this is just taking an
26 example out of the air, in the area near Yellowknife,
27 municipal water uses would have priority for example
28 as opposed to say mining water uses, giving a priority
29 to the quality of drinking water here, as opposed to
30 the use of water for mining purposes. Now those kind

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 of priorities which would establish a framework for
2 considering water applications that haven't of course
3 been set and as another example, of the absence of a
4 framework of analysis or management in the north.

5 O In your opinion, is that
6 part of the reason why the applications for licences
7 seems to take so long?

8 A Well I said in my study
9 that -- and in my testimony that the average time for
10 licences to date, has been on the order of 2 years,
11 that's in the Northwest Territories. In the Yukon
12 licences have been issued at a somewhat brisker pace but
13 it's still on the matter of months -- months and some-
14 times years. I don't think you can say that because
15 there isn't a framework of management that this is the,
16 the cause for the delays in the granting of licences.
17 You know the Water Act has been in force for only some
18 four years now. There was no water management in the
19 north before 1972. A certain amount of the problem
20 is just catching up with somewhat 30 years at least of
21 important mineral development in the north, catching
22 up with all the projects which have heretofore been
23 unregulated. I think that myself, that with -- I know
24 this is true -- with the pressure of imminent develop-
25 ment proposals, licencing procedures can be speeded
26 up quite a bit in the case of, for example, the Snare
27 Rapids, hydro development, the licence was issued in
28 ten months, because it was an urgent -- it was an urgent
29 project in view of the Department of Indian and Northern
30 Affairs in the Northern Canada Power and Commission.

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 Other delays have been in the
2 process of -- this is true -- in the process of setting
3 licence conditions. In the case of one mine in the
4 Yukon for example, and I don't want to belabour
5 instances, but, as an example, the licence conditions
6 were the subject of almost like an negotiation be-
7 tween the mining company and the Water Board, this can
8 take quite a long time if the -- what happens is the
9 Water Board comes to -- after hearings and after its
10 own studies and getting outside opinions, and so on,
11 it comes up with a draft licence. That draft licence
12 is approved by the Water Board on a temporary basis
13 and it's shown to the applicant. He responds to it
14 and makes suggestions as to changes that he thinks he
15 can afford, you know, more in keeping with the -- his
16 idea of the proper cost to spend on pollution control
17 or on technical feasibility, he may disagree and so on.
18 This can go back and forth for some months between an
19 applicant and the Water Board under the current pro-
20 cedure and this has caused delays. I think in the case
21 of the pipeline proposal, we have, that such a pro-
22 cedure could be shortened immensely. You see, in the
23 case of a mine, the interest of the mine being already
24 in operation, is to delay the proceedings if you will,
25 is to get the best deal it can for its -- the conditions
26 of its licence. In the case of a pipeline proposal
27 it's raring to go, I think they can settle things more
28 quickly.

1 Q Now, I notice from
2 your publications that you've done some studies on
3 the Dempster Highway. Were there water licences issued
4 in the construction of the Dempster Highway, or was
5 it done by some other means?

6 A The Dempster Highway
7 has been regulated under the Territorial Land Use
8 Regulations and under the Northern Inland Waters
9 Act. Under the Northern Inland Waters Act authorizations
10 have been issued for stream crossings and for the
11 use of water in construction camps. Those are the only
12 water uses associated with that project.

13 Q Would you be concerned
14 if the Mackenzie Valley Pipeline went ahead with water
15 uses being regulated by authorization rather than by
16 licence?

17 A Well, I don't think it
18 makes -- aside from the legal difficulties I've mentioned
19 in my testimony, and as I said, the benefits I think
20 can accrue and should accrue from further licencing
21 here if the circumstances justify it. I don't see any
22 problem with authorizing the water uses associated
23 with the pipeline.

24 Q And if water uses are
25 authorized, how does the public get access to the
26 reasons for authorization or how does it get input
27 into the process to express some concerns if water
28 is to be used from an area where there may be some
29 conflict?

30 MR. SCOTT: Mr. Commissioner,

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly'

1 I hate to interrupt my friend, but perhaps I misunder-
2 stood; is it not the position of the Canadian Arctic
3 Resources Committee that this kind of licencing should
4 be done by its authority rather than by the Inland
5 Water Review Board? If that is its position, really do
6 we have to concern ourselves with how the Inland Water
7 Review Board does things now?

8 MR. BAYLY: Are we accepting
9 that recommendation already, Mr. Commissioner?

10 MR. SCOTT: No, I understood
11 that to be the recommendation of the Canadian Arctic
12 Resources Committee.

13 THE COMMISSIONER: Well, do
14 you want to straighten them out, Mr. MacLeod?

15 MR. EVANS:

Well, maybe you could.

16 A Well, my response is
17 only that I think I'm only responding to the real
18 procedures which apply to authorizations under the Act.
19 Those procedures I would take it, would be the same
20 under our proposal, although they would be administered
21 by the authorized officer instead of the controller
22 of water rights as they are now.

23 Does that answer your
24 question, Mr. Scott?

25 MR. SCOTT: No, but that is
26 perhaps as far as you can go. I think I understand.
27 What you're telling me is that the Inland Waters
28 Resources Act and regulations insofar as they
29 exist are simply going to be applied by the authority
30 so we should know how they are applied by the existing

Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 authority so we may judge the problem that the new
2 authority will have in applying them. Is that right?

3 A Yes, that's what I'm
4 saying.

5 MR. SCOTT: All right, thank
6 you.

7 THE COMMISSIONER: Well, you
8 pointed out that, going back to Mr. Bayly's original
9 question, that many water uses that -- let's put it
10 this way. Many applications to use water will be made,
11 but in respect of which it will not be practicable
12 to hold public hearings. They will have to be granted
13 in a sense in an administrative fashion, and I
14 thought the reasons you gave for that were obvious
15 and compelling, and that really takes us back to the
16 fundamental thesis of your two colleagues.

17 A Yes, it does.

18 I think the same analysis
19 that, you know, I tried to bring to water administra-
20 tion applies to land administration, that --

21 WITNESS THOMPSON: I think this
22 is a perfect example of how destructive of the workings
23 of regional institutions is a project of this kind,
24 because here we are advocating a centralized authority
25 which is going to shortcut all the responsibilities
26 of the Water Board, at the same time as a group we're
27 concerned that the Water Board should become an effec-
28 tive body under the Northern Inland Waters Act. It's
29 virtually exclusive. What we're suggesting is that
30 field representatives should become inspectors and

Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 persons who can issue authorizations under the Northern
2 Inland Waters Act. But it's quite obvious that when it's
3 done on the scale required for this project, that
4 Water Boards are going to be regarded as institutions
5 that just don't work any more, have no real part to
6 play. How will they integrate, for example, applications
7 for other types of water uses with the program that's
8 being carried out under the authorized officer? It's
9 typically an example of what we see as a conundrum and
10 I guess we're recommending that if the pipeline is to
11 go ahead, the values of the regional Water Board have
12 to be largely sacrificed to the exigencies of building
13 the pipeline.

14 Q That's the way the
15 game must necessarily be played, so you're saying that
16 that should be made plain so that there isn't a lot of
17 kidding around of local inputs and so on.

18 A Right

19 Q Really, you tried to be
20 forthright and were forthright in your paper on that
21 whole question.

22 A Yes.

23 MR. BAYLY: Q Now that's a
24 question that I have to you, Dr. Thompson, with regard
25 to the integration. Would you envisage that those
26 functions presently carried out by a body like the
27 Water Board in areas which don't concern the pipeline,
28 like water use for communities or for mines or other
29 industrial facilities, would they, because they are
30 within the geographical ambit of the Mackenzie Valley

Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 Pipeline Authority as proposed come under its juris-
2 diction for design review and regulation, or would
3 the Water Board continue to have jurisdiction, and if
4 so, what do we do with conflicts?

5 A I anticipate that the
6 Water Board, the land use inspectors and the land use
7 regulations, public health officers would continue
8 to carry out their responsibilities with respect to
9 non-pipeline-related activities. The difficulty,
10 though, is how they are going to discharge those
11 responsibilities alongside an authorized officer who
12 is discharging parallel responsibilities for this one
13 project.. There will inevitably be conflicts and
14 difficulties. That's why I think that this authority
15 that I'm recommending would have to ultimately have a
16 line to the Minister in the Cabinet because somebody
17 up there is going to have to say in certain respects
18 that the administration of for instance water require-
19 ments with respect to the pipeline are going to take
20 precedence and they're going to have to instruct
21 land use inspectors to lay off, or to hold back where
22 their discharge of responsibilities of non-pipeline
23 activities come into conflict with regulated activities
24 for the pipeline. Or vice versa; maybe in some cases
25 the instruction would be that the authorized officer
26 has to hold back and allow scope for the carrying out
27 of responsibilities by non-pipeline, and in the case
28 of non-pipeline activities.

29 Q And that, I take it, is
30 what you were talking about, Mr. MacLeod, in the

Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 vital question of having to have priorities for water
2 use, otherwise these conflicts may be insoluble, and
3 may become political issues as opposed to things that
4 are set beforehand by cooler heads.
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Thompson, MacLeod, Skinnerland
Cross-Exam by Bayly

1 WITNESS MACLEOD: That's
2 a fair way of putting it, I suppose. When there's no
3 clear standard for deciding something and something
4 has to be decided, then all kinds of factors come into
5 play and it can seem to be a political decision, I mean
6 to people, instead of one based on science or equity,
7 I suppose.

8 Q We were told, Mr. MacLeod,
9 and Dr. Thompson, by some people from Alaska recently
10 from the North Slope that if they had to do it again
11 in their land claims, they would try and control as
12 much of the water and gravel as possible as those
13 two commodities seem to be in Alaska more important
14 than gas and oil and scarcer in some places.

15 It appears that this conflict
16 may arise, particularly where water is scarce, so
17 fresh water is scarce. Would you see the same sort of
18 problem with land use regulations which deal with
19 gravel mining operations and the gravel mining permits
20 issued by the authority?

21 WITNESS THOMPSON: I think
22 Mr. Skinnerland should comment.

23 Q Mr. Skinnerland?

24 WITNESS SKINNARLAND: I can
25 comment on one part. I'll be a little careful on
26 getting out on my aerial expertise. However, there
27 is certainly no doubt when you start to deal with
28 developments in the North, the aspect of gravel is
29 certainly one of the most important ones. I think they
30 have found that in anything you deal with the logistics

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 aspect, particularly in roads and airstrips as well as
2 the communities you build, they're almost totally
3 dependent upon having gravel unless you go to the
4 extreme solution like on Prudhoe Bay where you go on
5 piling which is frozen into the perma frost. There is
6 certainly no doubt that as you look forward, there are
7 going to be tremendous conflicts in the Mackenzie about
8 the use of the gravel proposed. These are limited.
9 I don't quite understand the aspects of the water
10 because certainly for the time being within this
11 framework we are talking about here in the pipeline,
12 I can't see a pipeline as a large water user per se
13 there are local problems, however, with it. But I can't
14 see in terms of using it as a large use of that
15 resource. But there is certainly no doubt that during
16 the construction period, the protection of the water
17 resources also is a prime concern.

18 THE COMMISSIONER: Excuse me,
19 Mr. Bayly. It's five o'clock. Maybe we could adjourn
20 for five minutes and stretch our legs and if you
21 people are going to be another hour or so with this
22 panel, we could carry on after that. If you're going
23 to be longer than that, we might consider coming back
24 tonight? Is that all right? Can we just stop for a
25 few minutes?

26 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)
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Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Okay. I suggest we simply carry on and finish, even if it's as late as 6:30 or 7:00 and then we know that we have the day's work behind us.

MR. SCOTT: All right, Mr. Bayly.

THE COMMISSIONER: Is that all right?

MR. SCOTT: I'm doubtful whether it can be done within that timeframe you set, Mr. Commissioner, but I have no objection to continuing. I know this panel was anxious to leave tonight but it might be better to go for an hour and a half and then begin at 8:00 again rather than to--

THE COMMISSIONER: Okay.

MR. SCOTT: All right, Mr. Bayly.

MR. BAYLY: Well, Mr. Commissioner, I'll be responsible for the length of the questions but not for the answers. So, if they want to get out tonight, they should know that.

THE COMMISSIONER: Well, maybe we should just have the questions and not bother with the answers.

MR. BAYLY: Now, Mr. MacLeod, if water uses were licensed in the proposed pipeline, do you have any concern that the license conditions might be too inflexible in that for license amendments you might have to have an additional hearing?

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 WITNESS MACLEOD: Well, that's
2 a potential problem. There's provisions in the Act
3 for emergency amendments to a license that don't require
4 a hearing. That provision has been used in a couple
5 of instances already. The couple of instances involved
6 situations that didn't strictly speaking involve
7 emergency incentive, a danger to life or property but
8 emergency in the sense that money was at stake and
9 the delays of the hearing would lead to loss of money.

10 One case I'll refer to in
11 particular is the Snare Dam and in that case, when it
12 was found that the dam was improperly located,
13 amendment to the license was granted on an emergency
14 basis. So, while it's a problem, I think in some
15 instances that problem can be got around by the emergency
16 power to amend and others by holding a hearing.

17 I think it should be--if you
18 are going to license a water use, I think you ought
19 to take into account that those licenses conditions
20 are considered important enough that the public interest
21 is at stake and they ought to have a say in changing
22 them.

23 Q Mr. Skinnarland, can you
24 envisage a situation if a snow road is constructed
25 on the North Slope in the Arctic Gas proposal, if it's
26 given the go-ahead, that there may well be applications
27 for more water from lakes and aquifers and rivers than
28 the present Arctic Gas application shows and that a
29 water license might grant?

30 WITNESS SKINNARLAND: First,

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 I'll start with this; some of this may be again a little
2 outside my area of expertise, however, I did some work
3 in the early days on the quantities involved in
4 connection with snow roads, mainly from the point of
5 view of constructibility and the requirements to handle
6 this water.

7 I would say from general
8 experience and having been in the North, there certainly
9 would be areas there where these uses could foreseeably
10 interfere with the aquatic life in these lakes because
11 there certainly is no inflow in the wintertime if
12 you were pumping out of the lakes.

13 Q Now, were you associated
14 at all with the snow roads that were constructed or
15 that were attempted to be constructed in connection
16 with the pipeline that Alyeska built?

17 A Not directly. My
18 knowledge from that is strictly from post-mortem
19 discussions, particularly with the people from the
20 Alaska Pipeline Office, so I cannot claim firsthand
21 knowledge on that.

22 Q In your study, you talk
23 about the use of government reports or government
24 experts, I'm sorry. This is to you, Mr. MacLeod. If
25 public hearings were held, is it your opinion that
26 government experts should be made available to give
27 evidence?

28 WITNESS MACLEOD: Well, yes,
29 I discussed it at some length in my study in Chapter
30 Two in the problems of the hearings and I don't think

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 I need to say anything at this Inquiry in particular,
2 because I think the value of the government expert's
3 testimony has been amply demonstrated here.

4 These problems of Arctic
5 environment are problems that are in a way peculiarly
6 within the knowledge of so many of the civil servants
7 that work for the government. The testimony is
8 invaluable.

9 Q And I understand presently
10 under the Northern Inland Waters Act, it isn't a
11 requirement that government experts give evidence?

12 A Well, no rules have
13 actually been formulated or brought down by the Water
14 Boards as to the procedures at the hearings. It's
15 unclear exactly what the status is of what participation
16 of government experts at hearings is. So, as I've
17 recommended, I think the government experts ought to
18 be made available if hearings were held but I--

19 Q So, you would recommend
20 that rules for these hearings include some sort of
21 ruling as to the participation of government experts?

22 A Yes, I would.

23 Q Can you tell us just from
24 your information, I don't know how up-to-date it is;
25 you've told us how many licenses have been issued,
26 do you know how many applications are pending or
27 backlogged of the two Water Boards?

28 A From my memory, I think
29 it's in the order of twenty to twenty-five licenses
30 are pending in each Territory. Again, from my memory,

Thompson, MacLeod, Skinnarland
Cross-Exam by Bayly

1 I believe that some two hundred and fifty authorizations,
2 this was as of last March I suppose, about two hundred
3 fifty authorizations had been issued in the Northwest
4 Territories and over two hundred authorizations in the
5 Yukon.

6 Q Well, the present rate
7 of processing the license is that it might take many
8 years to process even the ones that are pending at
9 present.

10 A Well, conceivably.

11 Q You referred to one
12 situation with regard to the procedures which are used
13 to grant authorizations, that is that there are in
14 camera sittings held. Are there other procedures which
15 you feel should be changed because they either don't
16 provide public access or offend the rules of natural
17 justice?

18 A No, there's a particular
19 problem I was referring to and my testimony was just
20 the problem that representatives of applicants, or
21 pardon me, applicant's employees meet with the Water
22 Board in camera to discuss draft licenses, draft water
23 licenses. It seemed to me that those people who have
24 intervened at the public hearings with respect to those
25 licenses, also ought to be allowed to attend and make
26 representations on the draft license.

27 Q Those are all the questions
28 I have of this panel. Thank you very much, gentlemen.
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Thompson, MacLeod, Skinnarland
Cross-Exam by MacLachlan

1 MR. SCOTT: Mr. MacLachlan?

2 MR. MACLACHLAN: I have some
3 questions.

4
5 CROSS-EXAMINATION BY MR. MACLACHLAN:

6 Q Now, Mr. Skinnarland,
7 turning to page 5 of your testimony, in particular
8 question No. 7, you are referring to certain aspects
9 of construction and their potential impact. Is there
10 any correlation between the degree or intensity of these
11 impacts in relation to the amount of tonnage or the
12 number of men required?

13 WITNESS SKINNARLAND: Because
14 of the noise of the fan, I didn't quite get the last
15 part of your question.

16 Q In your answer to question
17 I'm No. 7, /assuming that in your answer that you are stating
18 that if the tonnages are greater or the requirements
19 for manpower are more then the intensity of the potential
20 impact is greater too.

21 A I understand that if
22 the tonnages are greater, the impact will be greater?

23 Q Yes.

24 A Yes, I would say that
25 I'm still of the opinion that the greatest impact
26 comes from the composite of the construction activities,
27 and naturally the larger the project is, the more you
28 can say logistics facilities you will need in terms of
29 camps and storage places, and in that way I would say
30 the impact to some extent is proportionate to this

Thompson, MacLeod, Skinnerland
Cross-Exam by MacLachlan

1 activity. They also then extend to the entire
2 transportation system, the computations and what is
3 connected with executing the entire project.

4 Q I have a general question
5 addressed to the panel, and it concerns the long-term
6 monitoring of the pipeline. Once the pipeline is
7 in the ground, what responsibility does your proposed
8 pipeline authority have for implementing applicable
9 regulations and stipulations after the pipeline is
10 completed? Also, what role would the pipeline company
11 play in this regard after the pipeline is in the
12 ground?

13 WITNESS THOMPSON: Mr. Skinner-
14 land would like to give an answer too. One of the
15 responsibilities of the authority would be to develop
16 a plan for the continued monitoring of the pipeline
17 from an environmental point of view after the con-
18 struction is deemed to be completed, and after the
19 applicant is discharged in the sense of the initial
20 stages of construction. I wouldn't want at this time
21 to make specific recommendations beyond saying that
22 part of the role of the authority would be to recommend
23 what further ongoing type of supervision and responsi-
24 bility would be the most efficient and effective.

25 Q Mr. Skinnerland?

26 WITNESS SKINNARLAND: I
27 agree with that basic approach. I might amplify a
28 little more on that. I think one of the items which
29 I included in this design review is disaster preven-
30 tion and disaster containment. Naturally these

Thompson, MacLeod, Skinnarland
Cross-Exam by MacLachlan

1 -- at least in my opinion-- are considerably smaller
2 in the gas pipeline than in an oil pipeline. But it
3 is my opinion that it is the responsibility of the
4 authority to look into these matters during the
5 design review of the pipeline system. But I certainly
6 cannot foresee that it would be practical nor desirable
7 to have the authority to continue to be a monitor
8 because here again I believe equally as much as Dr.
9 Thompson that the normal authorities, be it the
10 National Energy Board, which certainly claims to have
11 monitoring responsibilities and regulations, or
12 Environment Canada or Indian Affairs, to take over
13 these; but I certainly do think that the authority in
14 the design review may be joint, as Dr. Thompson
15 suggests, with the engineers of the National Energy
16 Board has to look into on the forward basis what this
17 pipeline system could do to the environment and
18 certainly in terms of gas pipeline that flows through
19 communities a more instantaneous disaster with a
20 failure in a gas pipeline.

21 Q Mr. Skinnarland, are you
22 aware of any plans of the pipeline applicants, in
23 particular Foothills, whereby they have instituted
24 plans to have an environmental field team on the
25 pipeline construction?

26 A Yes, I have read the
27 Foothills application, or I would say most of it, and
28 particularly the aspect which deals with the construction
29 part where they do propose or say in its implementation
30 to have an environmental field team. I certainly

Thompson, MacLeod, Skinnarland
Cross-Exam by MacLachlan

1 do agree that that is necessary that the pipeline
2 company also has expertise in this area because they
3 are the ones who have to be responsible for instructing the
4 contractor teams and set the stage for this field
5 implementation. But that certainly, in my opinion, in
6 no way eliminates the need for having the authority
7 also at the same time because I think that as I've
8 been in construction, this concept of self-policing
9 just doesn't work when the pressure is on. The whole
10 team, both the company's team to set the stage, as
11 well as the representative of the, in this case as
12 I think Dr. Thompson put it, the owners of the land
13 who has given the company the right-of-way permit to
14 go through. I don't think you can solve the problem by
15 just having an environmental team on the owner's side
16 to start the chain. I think you have to have the whole
17 interaction between the two parties, but the authority
18 representing the landowners.

19 Q Do you anticipate any
20 specific liaison between your proposed pipeline
21 authority and the environmental field team?

22 A Oh, I think that that
23 is a daily necessity, again like I think you will find
24 in my brief that the key to the whole thing is to get
25 out of the adversary approach and into a co-operative
26 approach between the owner and the regulatory agencies,
27 and by doing that you will avoid these confrontations
28 in the field and delays where you really solve nothing.
29 You solve the problems before you start on the issue
30 and then you have daily communications to resolve the

Thompson, MacLeod, Skinnarland
Cross-Exam by MacLachlan

1 variations that certainly will come up from day to day,
2 both in certain designs as well as conditions out
3 in the field. There's no way you can foresee every-
4 thing you're going to encounter during a project which
5 stretches over thousands of miles.
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Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 MR. MACLACHLAN: Okay, I have
2 no further questions.

3 MR. SCOTT: Mr. Steeves,
4 please.

5 CROSS-EXAMINATION BY MR. STEEVES:

6 MR. STEEVES: Thank you.

7 Q Mr. Skinnarland, did you
8 do a study for the Canadian Wildlife Federation?

9 A No, I have not done a
10 study for the Canadian Wildlife Federation I had
11 some discussions in connection -- they asked me if I
12 would be prepared to appear before the National Energy
13 Board, but I did not prepare a study for the Wildlife
14 Federation per se.

15 Q Well some written evidence
16 was prepared by you or for you and you approved it, for
17 filing with the N.E.B., is that not correct?

18 A That is correct. That's
19 a very short page study and that is prepared by me,
20 yes.

21 Q Did you say this? "The
22 solution considered by DINA, D.O.E. staff, namely,
23 to create a special authority through further patch-
24 work on the already unmanageable interdepartmental
25 committee set up for the north is just as unlikely to
26 function efficiently as the existing maze." I'm reading
27 from what I understand is your evidence, and that's what
28 you said.

29 A I said that.

30 Q Have you appeared in the

1 N.E.B.?

2 A No.

3 Q When do you appear?

4 A Don't know.

5 Q Well, are you going to
6 say that in your National Energy Board?

7 A Yes, I'm prepared to say
8 that.

9 Q Were you asked this ques-
10 tion and did you give this answer in your written
11 evidence? "What conclusions do you draw from your
12 study?" Answer - "That successful implementation and
13 stipulations forming part of the permit to build a
14 Mackenzie Valley Pipeline, can not be expected through
15 existing authorities having mandates in the north,
16 that is single implementa^{tion} authority is the only prac-
17 tical and efficient solution to the authority problem,
18 that an expansion of a mandate of the N.E.B. authorized
19 officer under the gas pipeline regulations will be the
20 soundest administrative solution to the authority
21 problem." Will you give that answer to the N.E.B. when
22 you give your evidence there?

23 A I think to the same
24 extent that I've said today, my basic analysis if you
25 try to implement it, by expanding in the--
26 authority, from what I looked at, appeared in the
27 studies the simple solution. In the presentation today
28 and after discussions within the CARC to find a more
29 common basis, I concur in with what Dr. Thompson came
30 up with, that it probably is better to separate this

Thompson, MacLeod, Skinnerland
Cross-Exam by Steeves

1 authority entirely from N.E.B., but like I have stated,
2 I am of the opinion that the Gas Pipeline Regulations
3 is the simplest basis to use for including the rest
4 of the stipulation which will come from both
5 of this Inquiry as well as the hearings for N.E.B.,
6 where you will find special conditions in connection
7 with a Mackenzie Gas Pipeline which need to be included
8 in these regulations or stipulations, whichever you
9 want to call it.

10 Q Dr. Thompson proposes
11 here today, the very solution, that you condemn in
12 this evidence, is that correct? I'm sorry that --

13 WITNESS THOMPSON: The
14 answer is "No," Mr. Steeves.

15 Q Let me turn to you. Do
16 you propose the solution that's been offered up by
17 the people at DINA? I understand you just say that
18 you do. You want a special authority.

19 A Well I think that I
20 responded to that point in my statement In Chief, I
21 think that the model that they have in mind and that
22 is being referred to would be sort of a re-application
23 of the sort of government task force that the government
24 set up when they initiated consideration of the pipe-
25 line, that is, it's structure would be highly bureau-
26 cratic, it would be an effort to have committee rep-
27 resentatives of each of the branches within DINA and
28 each of the branches within D.O.E. and representatives
29 from the National Energy Board and the structure would
30 all come together under a task force which would be a

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 single authority. That's not the kind of model that
2 I have in mind or that Mr. Skinnarland has in mind.

3 Q Well I'm sorry, are you
4 speaking for Mr. Skinnarland now?

5 A Well, pardon me, I am
6 speaking for myself, you can ask Mr. Skinnarland, if
7 he agrees with that.

8 Q Well let me go back to
9 you, if I can sir. Where are we? Are you for an
10 application of the power to the N.E.B. authorized
11 officer or are you ^{condemning} it now?

12 WITNESS SKINNARLAND: I'm for
13 a specific authority which is -- based in terms of
14 mandate on the gas pipeline regulations which get
15 expanded to include such requirements which may come
16 out of this Inquiry as well as specific requirements
17 that comes out of the National Energy Board.

18 Q What has Dr. Thompson
19 said to you that makes you believe now, apparently,
20 that what you formally thought, that is, an expansion
21 of a mandate with the N.E.B. authorized officer under
22 the gas pipeline regulations will be the soundest
23 administrative solution to the authority problem.

24 A That I still maintain.
25 I say here, the authorized officer where we have a
26 change is in between the original draft made and the
27 final is the authority to which this authorized officer
28 is responsible. There is certainly no change in what
29 I've stated nor in what we have presented. The main
30 thing is that there is a single authorized officer

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 who is mandated and that that authorized officer has
2 to give a report to somebody. And it is in this area
3 where we have had some discussions from specific solu-
4 tion how to come up with a satisfactory authority.
5 There is a difference between the authorized officer's
6 mandate and the authority.

7 Q Well I don't want to
8 belabor this too much, but I really would
9 like to understand if there is any difference between
10 the position in your N.E.B. evidence and the evidence
11 you have given here and I -- I keep conceiving or
12 seeing that there is and I want you to explain to me
13 if you can that there isn't. You say the soundest
14 administrative solution to the authority problem will
15 be an expansion of the mandate, of the N.E.B. authorized
16 officer. Now the authority problem we understand,
17 we're talking about the same thing there aren't we?
18 The supervision -- that the supervising of the --
19 the implementation of all the stipulations that are made
20 about the construction of this pipeline, is that the
21 problem?

22 A I didn't understand quite,
23 the last part of your question.

24 Q What do you mean in that
25 sense when you speak about the authority problem? Is
26 that what you and Mr. -- Dr. Thompson have been talking
27 about all afternoon here?

28 A I think we have talked
29 about two parts. We are talking about the authorized
30 officer who is the one who carries out the daily duties

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 and I don't think we have any difference of opinion
2 in our written testimony about that aspect. I think
3 we both wholly agree that that should be through a
4 single man. Where we I suppose find, that there could
5 be several solutions is the authority to which this
6 authorized officer has to report in his daily duties.
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Thompson, MacLeod, Skinnerland
Cross-Exam by Steeves

1 Q What's wrong with
2 doing it through the National Energy Board?

3 A Through the National
4 Energy Board?

WITNESS THOMPSON: Mr. Steeves--

5 Q Excuse me, can I have an
6 answer and then perhaps you could speak up.

WITNESS SKINNARLAND:

7 I think what is wrong
8 if you look at it through this ultimate then, is the
9 same item of conflict of jurisdiction between the
10 departments, and you have to get it specifically
11 through one, and I think this where possibly you
12 are reading from now, which certainly is not part
13 of the detailed presentation which I made before
14 this Inquiry today, that you have to take the whole
15 thing in context, and namely that is by overlapping
16 in a mandate regarding these things, and it has to be
17 something added over and above the present mandate,
18 whoever is going to do it, and it has to be a single
19 authority and under that single authority a single
20 person who is mandated to implement these stipulations
21 which come out of these hearings.

22 Q Would you like to add
23 to that, Dr. Thompson? Do you have some comment you
24 would like to make?

25 WITNESS THOMPSON: Yes.

26 As has been made plain, we have had considerable
27 discussion on this subject, where the authority should
28 reside for the operation of the authorized officer.
29 I guess I persuaded Mr. Skinnerland --

30 Q I'm sorry, could you just

Thompson, MacLeod, Skinnerland
Cross-Exam by Steeves

1 repeat that?

2 A We've had discussion
3 about where the authority for the operations of the
4 authorized officer should ultimately reside.

5 Q Yes.

6 A I, as Mr. Skinnarland
7 has indicated, I persuaded him that there are reasons
8 why it would not be desirable to have this function
9 totally deposited within the framework of the National
10 Energy Board, and the main reason for that is that
11 we're not talking about functions that apply only on
12 the pipeline right-of-way and we're not talking
13 simply about pipeline safety and pipeline engineering,
14 but we're talking about the impacts of transportation
15 systems, contractors whose job is to supply gravel,
16 contractors whose job is to organize camps, and the
17 kinds of impacts which these many operations will have
18 would represent an enlargement of the responsibility
19 of the National Energy Board beyond anything that
20 has ever been its role in the past, and would take it
21 into areas which are of vital concern to regional
22 government and to the structure of government in the
23 north as we have it, and the National Energy Board
24 in my view is simply just not a suitable agency for
25 that purpose.

26 Q Have you in fact read
27 Dr. Skinnarland's evidence, written statement of evidence
28 before the National Energy Board?

29 A No, I have not.

30 Q Oh. Can I read another

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 paragraph to you? This is at the top of page 4. I
2 understand this, and if you would attend carefully to
3 my reading, I understand this to be Dr. Skinnarland's
4 interpretation or his statement of how the whole
5 problem of authority and control can be put in the
6 hands of the National Energy Board, and I quote:

7 "That the stipulations arising from the Berger
8 Commission and National Energy Board hearings
9 be prepared as unique amendments or modifications
10 to the Gas Pipeline Regulations applicable to
11 the Mackenzie Pipeline only. Such amendments
12 and modifications must include the implementation
13 procedure."

14 A I hadn't read that but
15 I have seen that; that's the position that Mr.
16 Skinnarland had developed in his original drafts of
17 evidence,

18 Q And has he talked you
19 out of that position too?

20 WITNESS SKINNARLAND: No
21 I don't think he has changed whatever has to come out
22 has to be in those single documents. I haven't changed
23 my mind on that. But I don't think that the conflict
24 is in that point at all, because we are dealing about
25 a total package of regulations and stipulations,
26 which will develop into criteria for design and
27 that then forms the basis for the design review.

28 Q Could I ask you, Dr.
29 Thompson, how much experience you've had personally
30 with the problems of the supervision of the construction

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 of gas line or oil line for that matter in the field?

2 WITNESS THOMPSON: I haven't
3 had any--

4 Q Other than the East
5 Kootenay loop.

6 A I haven't had any
7 experience at all.

8 Q Well, what are your
9 duties or the duties of the petroleum corporation in-
10 sofar as the East Kootenay loop is concerned? You
11 say in your evidence you are following it up. What
12 did that mean?

13 A It meant this, that
14 every time the applicant got into difficulty, he'd
15 phone me and relied on me to troubleshoot through the
16 government department, and that was the role I played
17 for two years.

18 Q I'm sorry, does it
19 follow from that the N.E.B. is not competent to super-
20 vise construction of a pipeline? Is that what you
21 want to tell me, or tell the Inquiry?

22 A No, that's not what I
23 want to tell the Inquiry. The National Energy Board
24 has a part of this and of course has to follow through
25 in terms of pipeline integrity, but I don't think that
26 the National Energy Board should manage this thing in
27 a total way any more than I think that there shouldn't
28 have been a Berger Inquiry, for the very reasons that
29 we have this Inquiry. There should be an authority
30 which is a larger authority and represents larger

1 interests than are deposited in the National Energy
2 Board.

3 Q Oh, I see. It's your
4 view, I take it, then that the National Energy
5 Board is not capable of taking into account the local
6 views and interests. Do I read you right?

7 A I wouldn't express it
8 in quite those terms, but the National Energy Board
9 is not particularly suited to deal with the questions
10 of health in the Mackenzie Valley, for example.

11 Q Well, I know. Getting
12 back to my statement, am I close?

13 A You're close.

14 Q All right. Have you
15 studied on Section 44 of the National Energy Board
16 Act?

17 A I think that's the
18 section which sets out the interests or duties of
19 the National Energy Board.

20 Q Yes.

21 A There's one omnibus
22 provision --

23 Q And that's (e). Can I
24 read it to you?

25 A Yes.

26 Q

27 "Any public interest that in the Board's
28 opinion may be affected by the granting or
29 refusing of the application."

30 Are you familiar with the construction that's been

Thompson, MacLeod, Skinnerland
Cross-Exam by Steeves

1 put on the omnibus provision by the National Energy
2 Board?

3 A Yes.

4 Q You know that they consider
5 that obliges them to deal with environmental concerns.

6 A Yes, I appreciate that
7 that's --

8 Q And they consider that
9 that obliges them to deal with social impact concerns.

10 A Yes.

11 Q Economic impact concerns.

12 A Right, but I don't think
13 that the appropriate agency to handle them in the terms
14 that we're talking of here.

15 Q I'm sorry, I would
16 really like you to help me. I don't understand that
17 statement. Why aren't they the appropriate agency?
18 That's what the Government of Canada has said. You
19 must concern yourself with these matters.

20 A The National Energy
21 Board, in the case of a pipeline that operates within
22 the province, certainly doesn't take over from muni-
23 cipal authorities, from other provincial departments
24 and agencies, responsibility for assessment and manage-
25 ment of all the impacts of pipeline-building. Nor
26 any more should it in the north, just because of the
27 fact that the north happens to be still in a sort of
28 colonial type state. The reason is that there are
29 other elements in the totality of government than are
30 represented by the National Energy Board. By what

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 stretch of the imagination should the National Energy
2 Board or a Commission like ours as an Energy Commission
3 have responsibility to look after the impacts, for
4 instance, of housing a couple of thousand men in the
5 community of the Mackenzie Valley, or in the East
6 Kootenay? That's not our basket. We've no competence
7 in that respect, and the National Energy Board has
8 simply stretched its concept of its jurisdiction to
9 suggest that it would take over health impacts, local
10 regional economic impacts, emotional impacts, etc.
11 It doesn't make sense.

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

Q Just a moment please.

Again I want to put a proposition to you. Are you saying that this Inquiry doesn't make any sense?

A I'm saying this Inquiry makes lots of sense. This Inquiry makes a great deal of sense.

Q I thought Dr. Skinnarland--
Mr. Skinnarland, I'm sorry. I'm promoting you sir.

"The stipulations arising from the Berger Commission and the National Energy Board hearings be prepared as unique amendments or modifications to the gas pipeline regulations".

Are you saying that the NEB is not competent to decide what the guidelines or stipulations should be or are you saying you are not competent to supervise them? I don't understand what you're saying.

A Let's deal with that point. I don't argue with Mr. Skinnarland on that point but I don't think it's very important. If the National Energy Board thinks that all these requirements ought to be read into their regulations, all right, let's. These kind of requirements, I'm sure, are going to end up in all kinds of places, as I've indicated in my testimony. I'm sure that the Minister of Indian and Northern Affairs is going to insist that the right-of-way agreement have scores of stipulations set forth.

There are going to be requirements layed down in ordinances of the various local governments affected. The important thing is that

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 somehow or other all these requirements be sorted out
2 and integrated and through a design review process,
3 get pinned down. I don't believe for a moment that all
4 of the government agencies are going to stand back and
5 say, all of the permit, terms and conditions for land
6 use permits, for water licenses, for right-of-way
7 agreements, for access to gravel, for setting up
8 shelters for workmen; all of these can be turned over
9 to a writing into the gas regulations of the National
10 Energy Board. That won't happen. But the more that
11 gets put in there, the better.

12 Q Why won't it happen?

13 A Well, I guess I can only
14 fall back on my experience many years working with
15 governments and for governments and through government
16 and it just isn't going to happen. Nor should it
17 happen.

18 THE COMMISSIONER: Sorry.
19 What isn't going to happen?

20 A Well, I don't think that
21 you're going to write the health requirements for a
22 camp for workmen in the Mackenzie Valley into the gas
23 regulations of the National Energy Board.

24 Q And you don't think that
25 native land claims are going to be covered by the Gas
26 Pipeline Regulations?

27 A No, they're not and
28 there shouldn't be. Now, I agree with Mr. Skinnarland
29 that as much as can be put in to the gas regulations,
30 that's a good place to put them. But it's not the only

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 place where the requirements that bind the pipeline
2 applicant in respect to the environment are going to
3 end up.

4 WITNESS SKINNARLAND: No, I
5 think the interpretation--I'm not the lawyer and I'm
6 not ~ ~ in legal phraseology. I think as such
7 I'm an interpreter. I'm used to comply with regulations
8 and contracts and so on. I certainly have said in
9 there that this, what I suggested, on adding--using
10 the Gas Pipeline Regulation as the basic document
11 because it had most of it in there within existing
12 regulation and adding on.

13 But I don't believe that I
14 meant that you're going to change the Gas Pipeline
15 Regulations as they are applicable to the Mackenzie
16 Gas Pipeline specifically only and no other pipeline.
17 In other words, it's the same old thing which applies
18 to that one.

19 THE COMMISSIONER: Excuse me,
20 Mr. Skinnarland. Can I bring this discussion about
21 what you said to an end in this way; if you had said
22 in that statement that Mr. Steeves read that you saw
23 a particular incidence, if you saw a man strike his
24 wife with a hammer outside the door and so on and so
25 forth, well then it's appropriate to tax you if you
26 say something different today.

27 But that's a question of
28 politics and if you happen to have changed your mind,
29 that isn't one of the seven deadly sins. So, witnesses
30 always react as if it were and you're position, the

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 position of CARC and what I'm interested in is set
2 out in Mr. Thompson's evidence here on page twelve
3 and he says,

4 "This is a pipeline because it extends into our
5 northern territory but entails special environmental
6 and social problems. The geography brings into
7 conflict with unresolved native land claims.

8 The Board has no mandate, no particular mandate..."
9 because he had this Section 44 no doubt in the back
10 of his head,

11 "...to deal with these issues, nor is it much in
12 the way of past experience of special
13 competence".

14 I think that's true and I
15 don't think anybody has very much in the way of
16 past experience or special competence to deal with
17 it. Then he says,

18 "So that the people will have special experience",
19 and so on and so forth, "the authority will be
20 the Federal Government, the Territorial
21 Government and the native people."

22 Now, once you have said that
23 to assemble a group like that that have a particular
24 interest and concern with the North, if that's going
25 to be the authority, then the National Energy Board
26 is out unless they completely disassemble the member-
27 ship and reassemble them and nominating people who
28 qualify in those terms. Dr. Thompson then goes on
29 to say "But maybe we can have a fourth member non-voting
30 from the N.E.B. to ensure liaison and so on". Now,

Thompson, MacLeod, Skinnarland
Cross-Exam by Steeves

1 isn't that about all that this comes down to?

2 MR. STEEVES: I have no more
3 questions.

4 MR. SCOTT: Mr. Fraser
5 wonders if we can take five minutes.

6 THE COMMISSIONER: Okay.
7 We'll take five minutes.

8 (PROCEEDINGS ADJOURNED FOR FIVE MINUTES)

Thompson, MacLeod, Skinnarland
CROSS-EXAM by Scott

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Skinnarland and Dr. Thompson, you referred to the government's proposal, and I take it that you're referring to a discussion paper, as it was called, of what is called the working group on government operations, which has been circulated, I think.

WITNESS THOMPSON: I haven't seen that paper. I have heard the odd comment, but it's all been in the way of second-hand or third-hand information.

Q Well, just so you'll know, and perhaps Mr. Anthony will be able to show it to you, and just so in fairness, the paper deals with two options. One of them is defined as utilizing existing governmental mechanisms with expanded and improved co-ordination, and the second is an independent authority vested with delegated responsibility.

I take it that your objection is to the first option, that in fact you have adopted in substance the second option.

A Yes, I wasn't aware in fact that the second option had been put forward.

Q Mr. Skinnarland, have you read that paper?

WITNESS SKINNARLAND: No, I have not. As a matter of fact, my interest in this was much earlier, I'd probably have to say internal memo between people in Environment Canada and the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 Indian Affairs, which I suppose was the draft paper
2 which subsequently came out formally.

3 Q Well -

4 A I do not have it with
5 me here, but that was the only one I have seen which
6 essentially was again a rearrangement of existing
7 mandates and committees to try to handle this.

8 Q Well, the draft paper
9 makes it clear, as you will see when you see it, that
10 as in everything in life there are things to be said
11 for both ways of doing it, and things to be said against
12 both ways of doing it.

13 Now, I'd just like to ask
14 you for a second about the extent to which you see this
15 authority or any like authority replacing existing
16 mechanisms with respect to this project? Now, I take
17 it that first of all when you conceive of the authority
18 regulating something, you're talking about it regulating
19 the pipeline applicant and sub-contractors and so on,
20 but nothing more.

21 A That is correct, that
22 is entirely what I have in mind in what I have worked
23 on, that this is a solution to be able to carry out
24 the project on the shortest possible schedule after
25 it is authorized, and still implement the requirements
26 which have been set for giving the authorization to
27 build a pipeline; and it has purely to do with the
28 pipeline and it ceases to exist with completion,
29 when the regular authorities take over the monitoring
30 or whatever other followup arrangements are required.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

Q But do you agree, Dr.
Thompson?

WITNESS THOMPSON: When you
say "Nothing more," it strikes me that regulating those
activities of contractors and sub-contractors on and
off the pipeline is an enormous --

Q No, but I take it you
don't propose that this authority, as you conceive
it, should be able to regulate house rentals in the
area adjacent to the project, or regulate suppliers
of goods to businesses that are not pipeline-related.

A No, we commissioned a
study -- CARC commissioned a study on the history of
authorities of the type that I think you may have
in mind, and in that study the Tennessee Valley
Authority, other institutions of that type were
examined. Our conclusion was not to come forward with
recommendations for that kind of an authority. It
would -- and the answer is simple, however important
the pipeline may be, it shouldn't be achieved at
the price of totally demembering -- disemboweling
government in the north, and that's what that kind of
a proposal means. You simply substitute a dictatorship
for local government.

Q It's true, though, that
the corollary of that is really twofold. First if all
that there will be impacts and some of them major
that will be beyond the reach to control of the
authority that you're talking about.

A That is correct.

Thompson, MacLeod, Skinnerland
Cross-Exam by Scott

1 Q And the second corollary
2 is that everybody else in the Territories will have
3 their affairs regulated more or less under the existing
4 mechanisms of government that are in place or whatever
5 refinements may be developed in the ordinary course.

6 A That is correct.

7 Q All right. Let me put
8 this general proposition to you. In the study that
9 was done by the working committee -- and I don't know
10 if it was called a working committee to distinguish it
11 from any others, but that's the title -- in the
12 department they listed 150 or I think between 100 and
13 150 Acts and regulations that are presently in existence
14 to which this pipeline company would have to submit
15 if there were no Berger Inquiry or if there were no
16 Energy Board. Do you follow what I am getting at?
17 Between 100 and 150 Acts to which a construction
18 company building a pipeline would have to submit even
19 if the stipulations of the Energy Board and the Berger
20 Inquiry didn't exist, and that of thosethere were really
21 three types -- the first was the type that required
22 a builder to go for a permit, and the Inland Water
23 Board would be that sort of thing, a builder who needs
24 a large supply of water has to go there and get a
25 permit. The second type were Acts and regulations
26 that required builders not to get a permit but to build
27 according to a standard. I think perhaps the Explosives
28 Act is an example of that, you can only do certain
29 things. You don't need a permit but you can be fined
30 if you go ahead and do it without meeting the standard.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 And the third type was the type that imposed a general
2 standard that applied beyond a pipeline or construction
3 company, such as the employment standards sections of
4 the Labor Code, the Canada Labor Code.

5 Now what I was getting at
6 is these are standards in existence at the moment.
7 The Berger Inquiry and the National Energy Board will
8 add to the list of stipulations that now exist. I
9 think that's reasonably obvious by either replacing
10 some of the existing ones, or expanding them, or adding
11 entirely new ones. Are you with me so far?

12 All right now, what part of
13 that regulatory process do you intend that your
14 authority should take over?

15 A Well, of course you don't
16 expect me to answer it step by step.

17 Q No, but what I'm saying --

18 A No, I appreciate the
19 thrust of your question. It doesn't surprise me that
20 there are 150, you know, there could well have been
21 250 or more.

22 Q -- what I'm suggesting
23 to you, and perhaps I can just put the question and
24 you can comment on it or disagree with it. Isn't it
25 obvious that it will impose on any authority an
26 insuperable burden to apply all those Acts from the
27 Labor Code through the Immigration Act, which has
28 implications for this, by the way, and that what the
29 authority has to do first of all is make a selection
30 of the Acts and regulations that it's going to subsume
for the purpose of its work.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

A I think that's obvious, that -- I'm not suggesting at all that it could step into the shoes of every single existing authority under every statute and every regulation and administer and I agree, that a first step would to identify the areas where it could have an effective and could exercise effectively a delegation of power. And also I should consider the different kinds of roles it could have in relation to different types of regulation. I don't think it would be the same in every case. In some situations, the authorized officers through the field representative would have the complete delegation of authority and therefore would issue the permit. In other cases its role could be quite slightly different. It might take on the responsibility of representing the applicant up to the point where the existing authority exercises its responsibility, issues the permit. It might simply operate in a liaison role. There can be a whole different series of levels of operation.

Q Well that leaves four general possibilities. The first is that the authority will say we're not going to replace this regulatory agency that exists or assume the obligations of that law. The second is that we are going to replace it and get delegated responsibility to do its work and the Water Board is one that we've touched on that falls perhaps under that head. The third is, that we will act as -- the authority will act as the applicant's agent in persuading that other agency to grant a permit or do what is necessary and the fourth is, that you will --

the authority will perform only a liaison role. All right, now, tell me, as a matter of principle, how you decide what you're going to do and what you're not going to do? What are the touchstones that you have regard to, to say, well we're interested in this, but we're not interested in that?

A Well I think that you lay out a number of criteria. If you take, say, the function of issuing land use permits. The -- we're talking about the use of lands on the whole -- in relatively remote areas not in urbanized areas and not in the settlements. The function now is carried on between technical experts in government and applicants in industry with very little input or involvement in most cases unless they come -- you know -- unless they direct the impact of community with very little involvement of ordinary citizens and people. It strikes me that that kind of a function is one where you could have delegation to another authority and the authority then could carry out responsibilities of land use inspectors. I think you have to analyze the functions and a prime criterion is -- has to be the extent to which there is a high degree of local regional input and the extent to which it's more or less something between a civil servant representing an interest in Ottawa and an applicant in the field.

Q Well isn't that really the heart of the supposed difference between you and Mr. Skinnerland, that he, perhaps conceived of this role as related to construction primarily and therefore

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 the Energy Board might be a suitable vessel for the
2 authorities and you were interested in regulating medi-
3 cal delivery services and all the rest of it.

4 A When we had our initial
5 discussions, I had the reaction that if we were talking
6 only about activities on the pipeline right-of-way,
7 I would agree with Mr. Skinnarland then, that the
8 National Energy Board would be the suitable repository
9 but, he very adamantly made the point that you can't
10 simply stop at the right-of-way, that the activities
11 are so bound up together, that from the point of view
12 of efficient management, there has to be an authority
13 dealing not just with pipeline right-of-way activities
14 but, off pipeline right-of-way activities too. Well
15 once we get outside the pipeline right-of-way, then we
16 run into the host of problems that construction can
17 create, of a regional and local nature and that's when
18 I'd react against designating the National Energy Board
19 as the authority.

20 Q Yes, but with your broad
21 view, which you've outlined for us now, about what has
22 to be regulated, isn't it conceivable that you would
23 have a very hard time leaving any regulatory authority
24 of the 150 in the place where it now is, because it is
25 going to have effects in building the pipeline and in
26 the people who live in the pipeline valley and their
27 way of life and their standards.

28 WITNESS MACLEOD: Perhaps
29 Mr. Scott, I can offer a comment. As I've worked on
30 helping Mr. Skinnarland in the preparation of certain

Thompson, MacLeod, Skinnerland
Cross-Exam by Scott

1 of his evidence. I found myself with the same diffi-
2 culty as you've raised and for me, the problem of de-
3 termining which Acts ought properly to be delegated
4 or under the jurisdiction if you will of the authority,
5 was best answered for me by considering what matters
6 must be taken into account in the procedures that Mr.
7 Skinnerland is arguing for and when you've determined
8 to which matters the procedures apply, you come to
9 certain conclusions about what existing jurisdictions
10 have to be delegated. For example, it seems to me that
11 essential to Mr. Skinnerland's proposal as I understand
12 it, is the notion of a joint design review at an early
13 stage such that the stipulations can be incorporated
14 in conditions in some kind of document and in contrac-
15 tual provisions.

16 Q Mr. MacLeod, I don't
17 want to interrupt you, I don't think between the three
18 members of the panel and myself, there is any difference
19 with respect to that kind of stipulation. I'm much
20 more concerned about whether the panel would agree
21 that much more generalized regulatory matters, which
22 are going to be important should be subsumed. For
23 example, there are employment standards, that are
24 written into the Canada Labour Code and which apply to
25 every person who works in this country. Now that has
26 something to do with construction, but it also has to
27 do with minimum work standards that people in Canada
28 are entitled to rely on. Is this authority going to
29 say, well we're taking that over, so that people who
30 work on the pipeline won't necessarily have the ad-

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 vantage of those minimum standards. We're going to
2 grant permits and all the rest of it.

3 WITNESS SKINNARLAND: I just
4 have a comment here, if I may. I think I'm being
5 quoted a little out of context and extended. Number
6 one, you have to keep in mind that I am looking at
7 this from the execution point of view and in I suppose
8 what was read into the testimony today, doesn't contain
9 the entire portion which is in the brief which I have
10 tabled and that is, the assumptions upon which this is
11 based and these are fundamentally this, that because
12 you have now a Mackenzie Valley Pipeline Inquiry and
13 you have the hearings before the Energy Board, that
14 as a result of these hearings, there will be require-
15 ments attached to the granting of the right-of-way
16 which has specific things you have to do to be able to
17 construct on that right-of-way, and from the Energy
18 Board in addition to the normal requirements there will
19 be specific requirements which are unique to the design
20 problems which has to do with the Mackenzie Gas Pipe-
21 line and I never stated in anything I do, that this
22 authority is a regulatory body as such, which issues
23 regulations. The authority which I have proposed is
24 an authority which implements a set of regulations
25 which is handed down to you. You can label them
26 anything you want and in that way, I have to agree
27 that there are probably a 100, but if you take it down
28 in terms of execution, there are really only two
29 principle authorities and that is the Department of
30 Indian and Northern Affairs and the other one is the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 National Energy Board. When you start to branch out on
2 the others, I don't think I ever would propose that
3 such an authority would have anything to do with the
4 standards which are set about employment and people
5 and so on. There's no requirement. --

6
7 Q Well let's put an example
8 to you. The labour code says that you can't work a
9 man overtime in this country without a permit.

10 A I don't believe nor
11 contractor would every propose to do that and if it
12 was such a requirement it would have to be negotiated
13 like any other thing and get the permit to do so.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

Q I take it that that kind,
for your part, that kind of regulation you would be
quite content to leave in the Department of Labour
where it now is?

A Absolutely. Where I'm
directing myself to in this is looking at after the
two principal authority has granted the right-of-way
and the certificate of public convenience and necessity
with conditions. From there on, they're off to the
race and unless you have built in in those very
requirements a procedure which you see that you give
a fair chance to implement through this design review
and get it into the contract specifications and the
contract documents. Unless you do that, you will never
catch up with it.

Q Well, I understand that
point of your procedure about how it must be done
early to be effective but what I'm getting at and
perhaps there is no answer is is the panel able to
give me any assistance about how it would decide on
which side of the line an existing regulation fell;
on the side that should administered and granted by
the authority, or on the side that should be left in
the department, which in that case is labour and some
other might be DIAND where it now is.

WITNESS MACLEOD: I'd like
to offer and perhaps Dr. Thompson and Mr. Skinnarland would
comment on this; is if it requires long lead times in
planning to execute the particular matter that is under
aregulation, then I think that because of the necessity

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 to have that lead time and proper procedure, it ought
2 to go to the authorities. I think that's the test
3 that could be applied.

4 Q Well, that's certainly
5 a test. Are there any others, or does the panel agree
6 that the authority will subsume those areas where
7 speed is required or where there's a long lead time
8 now.

9 WITNESS THOMPSON: That's
10 an element. I think that the authority ought to have
11 a responsibility with respect to all types of
12 authorizations that the applicant must obtain, must
13 have some responsibility with all types of standards
14 to which there must be conformity, whether these are
15 in N.E.B. regulations, pipeline stipulations in the
16 Right-of-way Agreement or in terms of local bylaws
17 but that the particular responsibility which the
18 authority has is something that you have to sort out
19 on a fairly pragmatic basis with the general principle
20 being that the less local and regional popular concern,
21 the more likely it is that the authority can accept
22 delegation to discharge the responsibility.

23 Q All right.

24 WITNESS SKINNARLAND: To
25 forecast in a particular area, there is certainly
26 no doubt in my mind that if you do go through the joint
27 design review process, the engineers of the authorities
28 certainly have the responsibility that that design
29 meets such standards as are required and even though
30 they are not the ones that formulated these standards.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 But I don't think that is any different than any other
2 design process; that you have to comply with codes,
3 you have to comply with standards, you have to comply
4 with bylaws. That doesn't mean that you usurp the power
5 from the normal regulatory bodies. It's just that in
6 this case when you do design review, they have a
7 responsibility to see that these requirements are
8 complied with, such as done at one time, to save time
9 and where you have then conflicts, you may have to
10 resolve and I think then I would extend it that this
11 authority would have a responsibility to go back to the
12 proper regulatory bodies and get some exceptions out.
13 You can say exceptions or modifications which are
14 required to be able to work out the practical solution.

15 Q And I take it that insofar
16 as we're agreed, that insofar as the authority is going
17 to assume regulatory powers that belong to others,
18 insofar as that happens, we're going to have to develop
19 some mechanism so that we see that that doesn't happen
20 at the expense of other people living in the Territory
21 who are applying for permits and the obvious example
22 is water or gravel.

23 WITNESS THOMPSON: I wouldn't
24 be so optimistic. There's no way that this project
25 won't impact on everybody.

26 Q But what I'm getting
27 at--

28 A But what you want to do
29 is try to minimize the disruption.

30 Q But what you're doing

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 under your scheme is you're really setting up, to take
2 an example, two tribunals that will give water permits.
3 One, the authority for the pipeline company and the
4 other the existing authority for both of us, or for
5 all of us.

6 I take it that it follows
7 from that that even though there is an authority, there
8 has to be, at least in those areas, a very close
9 integration of the operations so that some kind of
10 consistency of approach will develop.

11 A I agree that that is the
12 desire.

13 Q All right, sir. Now,
14 I understand the point about building everything into
15 final design, if that can be done, and insofar as it
16 can be done and it's important, but I take it the
17 panel also agrees that no matter how good the final
18 design, if you can't enforce it in the field, all has
19 been wasted or much has been wasted.

20 WITNESS SKINNARLAND: I'd
21 just like to comment on that because it's possibly a
22 little different. The main thesis of my proposal is
23 that by including these requirements in first your
24 -- if specified in the stipulation in through
25 terms of engineering and scientific criteria as a basis
26 for the final design of the pipeline system. If you
27 take it from there, and you come up then with what's
28 considered the best practical solutions to these criteria
29 and those are included then in the contract documents;
30 namely the specifications, the plans and so on, from the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 point of view of execution and in this case, I speak
2 with my experience, I think you will find that most
3 of the things are automatically implemented because
4 there is no contractor per se that willfully
5 goes out and does something other than is in his
6 contract.

7 The problem is, if it isn't
8 included in the contract, if you sit with the subtle
9 stipulation and the contract here, then you bid on the
10 contract, you didn't know anything about those
11 stipulations. That is when the confrontation starts.

12 Q I think I understand
13 that.

14 A And the rest of it which
15 will refer to surveillance then is you cannot foresee
16 everything, so you have to have certain policing because
17 we aren't all angels in the field.

18 Q And the perfect
19 illustration of it is that no matter how elaborate
20 your specifications about wells are and no matter how
21 efficiently the contractors have costed the necessity
22 of building those specifications into the job, you
23 still have to have someone who's going to go out and
24 inspect the wells and has the power to say that won't
25 do. Agreed?

26 A I agree with that. But
27 don't have two inspectors and one from one authority
28 and one from another one and expect the same thing.

29 Q All right. Well, in
30 Alaska, for example, as I understand it, there are

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 inspectors who are paid by the applicant company who
2 inspect what are regarded as being, at least in the
3 first instance, security of supply matters and that's
4 the Bechtel Company.

5 Then, on the other hand,
6 there are government inspectors who have some role
7 to play. Have I got that right?
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1 A Yes. I think if you
2 apply the terms to this, it's really the quality
3 control, in other words the control that indeed the
4 pipeline is built in accordance with the plans and
5 specifications, still rests with the company or the
6 owner. Generally the owner in that case engages, you
7 can say, a separate engineer to do that and Bechtel,
8 that was one of the roles that Bechtel played in
9 Alaska, mainly to do with the quality control.

10 Q Well, what troubles me
11 is, is it possible realistically to make that kind of
12 dividing line? I mean I understand that wrapping the
13 pipe may be something that no one is interested in
14 except pipeline people, and the use of snow roads in
15 the slush is something that environmentalists are
16 concerned about. There are extremes, obviously, but
17 is it possible to draw a dividing line and say, "This
18 is something that we can trust the company to inspect
19 at its own cost and with its own men and this is
20 something where the authority has to be engaged."

21 A Well, I don't think you
22 have an either/or situation. Again, the same you can
23 say relationship takes place in most engineered
24 construction will exist with a pipeline. In other
25 words, you have the role of the owner and his designer,
26 and in terms of his daily operations, he still has to
27 have the quality control aspect. But when you come to
28 an installation, in this case where the third party,
29 namely the public has a considerable interest, you also
30 have to see that whatever requirements were set for

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 protecting, you can say the interests of the public,
2 is also implemented. So even though you have tried to
3 do this by putting it into the plans and specifications
4 of the contract documents, you still have to be out
5 there, and in terms of Alaska you will find that the
6 Alaska Pipeline office has a monitoring system where
7 they go in and do spot checks, and for example, the
8 much talked-about building failure , eventually
9 were discovered both ^{by} quality control as well as Alaska
10 Pipeline office almost simultaneously.

11 Q Well, does it follow --

12 A I'm the last one to
13 advocate you have to have both, but the quality
14 control is certainly the responsibility of the owner
15 and he builds that into his management system. But
16 nevertheless, the authorizing authority still has to
17 go in and see that it is indeed being carried out in
18 accordance with it.

19 Q Well, does it follow
20 from that that any authority to administer effectively
21 has to duplicate that kind of quality control?

22 A I do not say duplicate,
23 no. You can do this on a much smaller system in terms
24 of spot checks which are designed to check when there
25 are deficiencies.

26 Q I don't say "duplicate"
27 in terms of manpower. I'm talking about responsibility.
28 Is it the responsibility of the authority to do those
29 spot checks to see that these things don't happen?
30 In other words, are the public going to be able to look to

Thompson, MacLeod, Skinnerland
Cross-Exam by Scott

1 the authority if the welds are inadequate, or is the
2 authority going to be able to say, "Oh well, that's
3 something for the pipeline company, that's not something
4 that we are worried about."

5 A I can't agree when you
6 put it in that context because again both parties are
7 responsible. I don't think any pipeline company per
8 se would have an intent to install a pipeline with
9 a poor weld. It just isn't good business, and they
10 certainly would do anything they could in terms of
11 setting up a system to ensure that these standards are
12 met and in that way. But like in anything else where
13 you come out on these situations and it's moving fast,
14 and you do have like I think Dr. Thompson has said,
15 you have some different goals to some extent at that
16 time, because naturally the pipeline company wants
17 to build it as fast as it can, and it's in the nature
18 of us all when we're out there that we may try to do
19 some short cuts when we have a problem. This is why
20 you cannot rely on self-policing which has been
21 suggested in connection with the Mackenzie Gas Pipeline.
22 You have to have the conscience of them, and that
23 conscience are the inspectors of the authority which
24 are the simplest or the smallest system possible, layout
25 so that they can go in and say indeed the whole project
26 is carried out taking everything into consideration
27 including --

28 Q Can I have it this way,
29 that if there were welds that were defective, and
30 they were sufficiently defective that that meant the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 pipeline had to be dug up with great environmental
2 damage the next year or something like that, we should
3 be able to say, "Well, the company is responsible for
4 that. They have an interest in seeing that there are
5 sound welds, but the authority should have caught that.
6 That's the authority's responsibility as far as the
7 public is concerned."

8 Is that what you're telling
9 me?

10 A I would say yes, in the
11 final analysis. But if the normal quality control failed
12 here, I think the authority cannot say they don't have
13 responsibility, and I think that is the case in Alaska
14 when it comes to the government, they have taken all
15 that responsibility.

16 Q Well, in that sense
17 then there must be a duplicate responsibility.

18 A In terms of solving this
19 problem then it isn't quite as simple as you say it
20 would do environmental damage if they dig it out
21 tomorrow. Most chances are that an oil pipeline
22 if you had a failure the year after, the environmental
23 damage is 1,000 times the damage of taking it out at
24 this time.

25 Q All right,

26 A And that assessment has
27 to be made jointly at that time. If you got yourself
28 in trouble, what is the solution.

29 Q All right. Well now,
30 bearing in mind that those are going to be the

Thompson, MacLeod, Skinnarland
Cross Exam by Scott

responsibilities of the authority, that they're going to answer to the public, it's agreed that they're not answering simply to the landowner. Isn't that so? They're answering to the Canadian public in that.

A I certainly am of that opinion. I don't know about the others.

Q Dr. Thompson?

WITNESS THOMPSON: I agree.

Q And with that in mind what you have is an authority that is structured with as much independence of judgment as we can build into it.

WITNESS SKINNARLAND: I agree to that.

WITNESS THOMPSON: That follows, I think we want independence of judgment whether your premise is assumed or not.

Q What I'm concerned about, you see, is if you had an authority that was dominated by one of the applicants, you'd say, "Well, that's no good, there's a conflict of interest there and they don't have the requisite independence to be our watchdogs." Wouldn't you?

A Yes.

Q All right. Now what I'm saying to you is this authority is one that is dominated by three groups -- the Federal Government, the Territorial Government, and the native communities. I don't know whether you intended to exclude the white communities, but leave that by the by, it's the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 communities. Now, what I'm saying to you is what
2 assurance have we that that is the best way to ensure
3 an independent watchdog?

4 A Your original premise
5 was that the general public has an interest, and
6 so somehow or other we have to have an authority
7 that can answer to the whole public. The problem then
8 is that you're led into either an authority which
9 supplants all government, for the purposes of the
10 corridor which we don't agree with; or you're led into
11 some kind of an authority which is an expressant of
12 government bureaucracy which hopelessly^{ly} tangles things
13 from our point of view.

14 Now, if you look for a basis
15 -- a focus of concern that doesn't simply take over
16 all government's responsibilities, the landowner one
17 makes the most sense, and it's consistent with a lot
18 of models that we see around us all the time in connection
19 with construction projects. That is the person who
20 -- whose land is to be used with respect to a construction
21 project sets up a system for controlling and
22 managing and minimizing impacts. That makes good sense
23 as a base from which to operate this aspect of
24 responsibility, short of, as I say, creating simply a
25 substitute for the entire government apparatus.

26 Q Well, how about this
27 possibility? Isn't there a third possibility that
28 perhaps you haven't discussed with us, and that is
29 that a corporation be created by Statute with a
30 Board of Directors appointed, to use the expression,

1 during good behaviour, not removable for any political
2 or other reason except their behaviour, in the broad
3 sense, which can be overruled as every Crown corpora-
4 tion can, by Acts of Parliament or sometimes by order-
5 in-council, but which has nonetheless a fundamental
6 independence. It's not a delegate of anybody. Had you
7 considered that possibility?

8 A Yes, I'd considered that
9 possibility and it's got its attractions. It's not
10 the one we put forward because one reason, I should
11 state this, CARC is before this Inquiry principally
12 in terms of environmental issues, and when we addressed
13 our minds to this subject, we found that we were just
14 not capable of addressing this from/all of the social, ^{the point of view of}
15 cultural, native person impacts that we're involved
16 with here. In fact, personally when I comprehended
17 in this point of view the thing is simply this violence
18 and I just can't see how it can all fit together.
19 If you are looking at it from those points of view,
20 so in a sense we've taken a refuge, as it were, in
21 our mandate, which is to look at the environmental
22 concerns. If you ask me how to set about building a
23 pipeline efficiently so as to in the long run, not
24 in terms of a year or two in the local impacts on
25 the population within a year or two, but if you asked
26 me how to build a pipeline that in the long run will
27 serve environmental interests, then I say create
28 a hammer-like authority that can -- with all of the
29 power necessary to drive that pipeline through conform-
30 ing to all of those environmental stipulations. What it

Thompson, MacLeod, Skinnarland
CROSS-Exam by Scott

1 does to the local population and local interests and
2 what-not, I just have to put aside and ignore.

3 Q No, but Dr. Thompson,
4 what you've done in your model, if we're to look at
5 it, is you've created a Board of Directors which is
6 a series of delegates from existing power constituencies,
7 rather than go the other route, which is long-
8 term good behaviour appointments, and all I'm saying
9 to you is that it seems to me the inherent difficulty
10 in that is these three power groups or some of them
11 might get together and say, "Well, we're in a hurry to
12 get royalties and gas, we haven't time for environmental
13 considerations." And to appoint delegates of
14 existing power constituencies is less satisfactory
15 than to look for people who are not connected directly
16 with those constituencies but who understand them and
17 have some sympathy for their long-term objectives.

18 A You know, this is a
19 model and it's very attractive and I certainly would,
20 I suppose, put it on an equal pedestal with the model
21 we've been proposing. I've been looking or assuming
22 that there would be an Act of Parliament that would
23 create an authority so we're really talking about the
24 question of how you appoint the members who will
25 comprise that authority, and I have suggested or
26 we have put forward one model and there are many,
27 and I suppose all we're really advocating is that
28 somehow or other it's got to represent the Federal
29 Government, it's got to represent Territorial interests,
30 and I would place the interests of native communities,

Thompson, MacLeod, Skinnerland
Cross-Exam by Scott

1 and I mean native communities, on an equal basis
2 with these two other interest groups, as of the land
3 position.

4 Q Well then, let me ask
5 you this question. You contemplate a situation in
6 which an authorized officer makes a ruling which the
7 applicant doesn't approve of, and the applicant
8 can therefore appeal to the Minister in charge and
9 therefore presumably to the Cabinet and you get a
10 policy decision with respect to the priorities at
11 the top. Right?

12 A Well, I think I explained
13 that I would, in my evidence, that the authority would
14 have a Parliamentary mandate. The Minister is there
15 in the sense that any Crown corporation has a Minister
16 through which it relates to at the government. It
17 doesn't necessarily mean that the Minister can direct
18 the Crown corporation.

19 Q No, but --

20 A From discharging its
21 mandate.

22 Q -- why is it that only
23 under your scheme which you set out in your prepared
24 evidence, that only the applicant can appeal to the
25 Minister? Why shouldn't this Advisory Board or its
26 components that you carefully select have a similar
27 right to appeal?

28 A I don't understand why
29 you say I indicated that only the applicant could
30 appeal to the Minister.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 Q Well, maybe it's Mr.
2 Skinnarland's paper, but the scheme, as I see it,
3 establishes a situation in which if the applicant
4 is dissatisfied with a ruling that the authorized
5 officer in charge made, there's an appeal to reverse it.
6 It seems to me that as an ex-Minister of Finance has
7 said, that one of the virtues from a business point of
8 view of regulations is there's a co-option process and
9 regulators begin almost by osmosis to regulate in the
10 interests of the regulated. Now, why shouldn't this
11 Advisory Board that you're talking about into which
12 you built all these components have a right to complain
13 that the authorized officer has made a bum decision?

14 A Well, I think you can
15 assume in our model that the authority clearly would
16 have a decision.

17 WITNESS SKINNARLAND: Of
18 course we have possibly to apologize that some of it
19 in writing doesn't fit that closely together. I think
20 in intent there isn't that much difference. The
21 mandate I gave to the Advisory Committee or the
22 Advisory Board is that that is the only group which has
23 the right to make recommendations to change, you can
24 say the regulations and stipulations applying to the
25 grant of right-of-way and the issuance of a certificate
26 of public convenience and necessity, and it has to
27 include, I think, in each case of this that certainly
28 what I have written assumes, and that is the basic
29 which I said before, that the recommendations from
30 this Inquiry and the Energy Board is indeed a civic

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 document requirement by which its authorized officer
2 under the authority has to abide, and I cannot go
3 outside these requirements without getting that
4 particular mandate changed. They aren't the ones
5 who create these regulations; they are the ones who
6 see that they are carried out. And then their short-
7 comings in for short these regulations, then either
8 the company can appeal if they feel they have been
9 unjustly dealt with, or if it's discovered there are
10 shortcomings, well then you will go through a process
11 and you have to get the revision, and naturally that
12 has to go back to the same authority which I presume
13 would be the Government of Canada to change these
14 stipulations/ requirements which forms the basis for
15 being granted the right to build the Mackenzie Gas
16 Pipeline.

17 Q Well now, let's come
18 to the Advisory Board. Now the Advisory Board is going
19 to meet periodically and I take it that one of its
20 functions is to add some flexibility so that stipulat-
21 ions can in effect by recommendation be changed.
22 That's what the paper says, as I understand it. Have
23 I got that right?

24 A Yes.

25 Q And the Advisory Board
26 is made up of all the interest groups, if I could put
27 it that way, that we can think of, from COPE to the
28 company to local communities, and it's going to
29 establish its own procedures, and I take it that it's
30 relatively clear that that will -- or it's clear to me--

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 that if any kind of substantial majority is required
2 the chances of getting a change in the stipulations
3 is going to be extremely difficult. Right?
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Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 WITNESS THOMPSON: I agree
2 with that, sir.

3 WITNESS SKINNARLAND: I agree
4 with that.

5 Q Because the advisory
6 board is made up of delegates from organizations,
7 there were going to be all kinds of political
8 machinations going on. For example, if one community
9 is anxious to have a certain advantage, it may withhold
10 its consent to a change in a perfectly sensible
11 stipulation until it gets its way on some other score.
12 Isn't that obvious.

13 A Yes, but I believe in
14 this case, from what I wrote to what the percentage,
15 which I said there may be some shortcomings in matching
16 this together. I agree with Dr. Thompson's solution
17 that if this advisory body is an extension of the
18 ombudsman, I don't think that problem will arise
19 because at least the way I understand it, in his
20 proposal and from what an ombudsman can do, he has a
21 direct line to the Parliament and I suppose a certain
22 authority where he could deal also with the authority
23 because there I have to agree in the model which I
24 first suggested, you certainly could bow down if that
25 advisory committee became ineffective and you look at
26 the speed at which the pipeline is built.

27 Q So, this advisory board
28 may form a useful function in sort of looking over the
29 shoulder of the authority to report to its constituents
30 that everything is being done right but it's not really

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 going to be effective in introducing the kind of
2 flexibility that you recognize is required.

3 WITNESS THOMPSON: I don't
4 think that necessarily follows. I think the ombudsman
5 is intended to provide that flexibility and the
6 ombudsman uses the advisory board as his input of the
7 views and opinions of all of the groups that are
8 represented on the advisory board. The very purpose
9 of injecting an ombudsman is to have a focal point
10 for action and decision-making which is lacking as
11 your question indicated, which is lacking in the model
12 of an advisory committee.

13 Q So, that the ombudsman
14 is going to perform that function of reporting to
15 Parliament on what matters?

16 A That's correct, and the
17 ombudsman would be an advocate on behalf of these
18 groups of its concerns and it could treat with the
19 authority for changes in stipulations.

20 Q I come from a province
21 where the ombudsman has found that he can make a
22 report and no more than that. It isn't very often
23 acted on. Do you really see the ombudsman as anything
24 but a kind of escape hatch?

25 A Well, I used to come from
26 a province where the ombudsman was extremely effective.
27 I talking about Mr. MacLellan, the former Commissioner
28 of the R. C. M. P. and he was; there was no doubt
29 about his effectiveness. He had everybody in government
30 intimidated. I think it was maybe because of his past

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 R. C. M. P. I have no reason to be skeptical of the
2 function of an ombudsman of it's set up under
3 appropriate legislation, properly funded and assuming
4 that the right kind of a person is appointed.

5 Q And he's going to lobby
6 with the authority on behalf of interest groups who
7 want changes in the stipulation?

8 A I think that I've made
9 it clear and I think Mr. Skinnarland would agree that
10 I don't see that course of action being practical.

11 Q Well, what's he going
12 to do then?

13 A It's more in the nature
14 of dealing with complaints. There are going to be all
15 kinds of people who are hurt in the process of these
16 operations who have grievances and his role is going to
17 be to provide a channel through which these people can
18 register their grievances and complaints.

19 Q With whom?

20 A With the ombudsman. I'm
21 sure the ombudsman, with either the authority, who will
22 have certain official control over the applicant and
23 with the applicant itself because the applicant will
24 also want to trouble shoot. It doesn't want to
25 leave people uncompensated for injuries and where it
26 can change activities so as to remove a grievance, I'm
27 sure it would want to do that.

28 The thing is that some kind
29 of system has to be organized, I would think, to deal
30 with complaints and I look on the role of this advisory

1 committee and the ombudsman more in the role of a
2 grievance procedure than anything else because once
3 this thing gets going, I don't think there will be many
4 changes in stipulations.

5 THE COMMISSIONER: Well, Dr.
6 Thompson, we have without calling them ombudsmen, we
7 have ombudsmen appointed under various statutes of
8 Canada and the provinces. We have for many years
9 had pension advocates under the Veteran's Legislation
10 who are really ombudsmen for veterans who were there
11 to take on the bureaucracy.

12 Under the Official Languages
13 Act, which may be more analogous we have the
14 Commissioner of Official Languages, Mr. Spicer, who
15 really is an ombudsman and he reports to Parliament
16 as you suggest your ombudsman ought to do and his
17 clout, so to speak, comes from the fact that he has
18 the right to go public at appropriate times. Now,
19 this ombudsman may have two functions then. He may
20 deal with grievances. For instance, Mr. Blair, under-
21 took at a hearing in Colville Lake in August that if
22 anyone suffered a loss, for instance, by way of
23 damage to his trapline, Foothills would compensate
24 him within thirty days.

25 Mr. Blair even sought on that
26 occasion to articulate the machinery by which this
27 would be done. It was a valiant attempt. It wasn't
28 altogether complete but these things never are. The
29 ombudsman presumably in an instance like that would
30 have the obligation to take the matter up right away

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 of a specific case of loss. If somebody couldn't
2 get a job on the pipeline, somebody who lived at
3 Fort Good Hope and wanted to work, his qualifications
4 were as good as somebody else's but it was easier to
5 bring somebody in from Edmonton because he was in the
6 union and so on and so forth, all right, the ombudsman
7 intervenes presumably. That's what the guy is there for.

8 He has another function
9 presumably. I don't know whether you said this or not
10 but he might, for instance, as Mr. Spicer has done,
11 to say look, Berger recommended that there be such and
12 such provisions for the protection of the environment.
13 Those are actually not being carried out at all and
14 I'm telling you Parliament that this is what's
15 happened. Do you want to know? This has what's
16 happened.

17 He might say Berger recommended
18 that there be five thousand natives employed and there's
19 only five hundred employed and that's because the unions
20 aren't co-operating, Arctic Gas isn't co-operating and
21 the government isn't co-operating and I want the world
22 to know. On the other hand, he might say, look,
23 everything is going really great. But that's the kind
24 of role for an ombudsman and it doesn't have--you see,
25 once you put an ombudsman in business, he then becomes
26 someone, if he's got ability and drive, he becomes
27 somebody like Mr. Maloney in Ontario or Mr. Spicer in
28 Ottawa and you can have this advisory board as a kind
29 of appendage out here but he's an engine that's driving
30 itself, so to speak.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 One of the most interesting parts of your presentation
2 is this idea of an ombudsman which I must say in
3 sitting here for two years, it's never occurred to me.
4 I hope no one will say oh, well don't you remember
5 Mr. so and so who said that here.
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Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 A I'm very skeptical about
2 the function of an advisory board, say, attached to
3 the authorized officer. I think then it becomes just
4 window dressing. The authorized officer is going to
5 be operating at too sort of official^a level. On the
6 other hand the ombudsmen can establish a rapport
7 with an advisory committee so that he gets an instinct
8 for what his job is and they in turn representing various
9 agencies, maybe government groups are not too appropriate
10 here, maybe it's more a function for other types of
11 groups and they through the ombudsmen get a sense that
12 someone is monitoring the thing who isn't part of an
13 official system.

14 MR. SCOTT: Mr. Commissioner
15 I don't want it to be said that I'm opposed to mother-
16 hood, I have no reservations about an ombudsman who
17 will deal with individual complaints of the type that
18 have been discussed and make reports to Parliament
19 that things are, or aren't being done, but I'm concerned
20 about is the panel, as I understand it, agreed that
21 there has to be some flexibility with respect to the
22 stipulations, so that they can be varied if necessity
23 dictates or if good sense dictates and in the prepared
24 paper, it's the advisory board that is to make those
25 changes. Now I also understood from what was just said
26 that it was the ombudsmen who was going to recommend
27 changes in the stipulations and it's that function
28 that I'm concerned about. Who is going to make the
29 changes in the ground rules according to which this
30 project is built? Well is it the ombudsmen, is it the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 advisory board or is it someone else?

2 A Supposing they are, what
3 I might describe as technical or engineering changes.
4 They would come about through the work of the authorized
5 officer and his representatives in the field, in feed
6 back from the construction contractors or from other
7 government people who are interested and that process
8 would be an ongoing one and the authorized officer
9 would simply have authority because to the extent that
10 he has delegated authority under various statutes, he
11 would exercise that authority to change conditions and
12 change stipulations. Now supposing that the kind of
13 stipulation that is to exchange is desired has to do
14 with say the operation of a -- or location of a burrow
15 pit or something to do with the conduct of workmen in
16 a camp. This is the kind of thing that may start or
17 originate from a grievance that is, local people have
18 a grievance about the way things are being conducted
19 and they take it the ombudsmen and the ombudsman looks
20 into it and he discovers that the stipulations are
21 being met, but maybe there should be a change. He can
22 carry that matter forward.

23 Q If you and I persist in
24 taking examples about which we agree there is no prob-
25 lem, we're not going to be able to get at the thing
26 that troubles me. Supposing I have this situation,
27 that seems quite likely. The applicant, there will be
28 stipulations as to the season in which construction
29 can take place. The applicant gets terribly behind
30 and it may look as if a fourth construction season is

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 necessary, unless it's allowed to use its snow roads
2 three weeks beyond the environmentally safe period.
3 Now that will be contra to these stipulations. Now
4 that you say that and I think everybody agrees, that
5 there must be some flexibility to respond to that
6 kind of problem where the tradeoffs are just about
7 even. Now is that going to be within the capacity of
8 your authority. Surely the ombudsman isn't going to
9 decide that.

10 A No. You see, I would
11 think that --

12 THE COMMISSIONER: Excuse me,
13 the ombudsman doesn't decide anything, does he?

14 A No, he doesn't decide
15 anything. He's an advocate.

16 Q It's your observation
17 that the ombudsmen --

18 A In that kind of a situa-
19 tion, that the stipulations -- to take your example,
20 surely the stipulations would have a discretionary
21 period within which operations could be extended.

22 Q Well then it's not a
23 stipulation that gets in our way, is it? Let's take --

24 A No it isn't because the
25 authorized officer exercises the discretion, but the
26 time has run out and the applicant is asking for an
27 extension. Here is where we run into the whole question
28 we were trying to grapple with before. Now if it happens
29 to be a regulation in the natural gas regulations,
30 which are administered by the National Energy Board,

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 then whoever has authority under those regulations,
2 to deal with an extension, would grant the extension.
3 Now it's our recommendation that all that implementation
4 has to be melded in and made part of the function of
5 the authorizing officer, similarly if it's a question
6 of --

7 Q All right. The authorizing
8 officer responds to the authority and what happens is
9 that that kind of decision is going to be made by two
10 governments in the native community.

11 A He's going to get his
12 policy from them --

13 THE COMMISSIONER: Excuse me,
14 I think this is pretty vital. Who is going to decide --
15 well let's -- I mean that authority is not there just
16 to say hello to the managing director every once in a
17 while. Surely, that's what they're there for. That's
18 where the buck stops. They've got to decide. Are you
19 going to give me three more weeks to work on the snow
20 roads.

21 A Well I would say that in
22 most cases, the buck stops with the authorized officer
23 and as I said, I see a relationship between the authority
24 and the authorizing officer more as a board than the
25 managing director and a managing director only goes to
26 the board on policy questions.

27 Q But this case, he has
28 to go to the board and the board is composed of two
29 governments --

30 A Why would he have to go

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 to the board in that case. I think that's -- I think
2 he would decide that himself.

3 Q All right, then if he
4 decides that a fundamental stipulation can be waived,
5 what you're saying is that this authorizing officer
6 who I presume is selected by the authority has that
7 power?

8 A Yes. I would say that.

9 MR. SKINNARLAND: I will have
10 to disagree, with all due respect. The only one in
11 my opinion who can change the basic requirements of
12 the stipulations are those who issue them in the first
13 place, which I presume is the Government of Canada.
14 If you eliminate that, then you haven't got anything,
15 and I think you have a prime test case in Alaska
16 right now, that's what the whole argument is about,
17 because a 100 percent weld inspection is in the
18 stipulations and it will take and go back to the
19 Congress of the United States before you can change
20 it, and I think there are two levels in these stipula-
21 tions, but certainly the premise which I have been
22 working from is that the stipulations in all the
23 basic things are complete, be that from as I say from
24 this Inquiry and others. I gave it Dr. Thompson says,
25 you have certain things which are discretionary to
26 the authorizing officer but if you go through like
27 going beyond the the season, I think then you have to
28 go back to the authority which landed this in the
29 first place.

THE COMMISSIONER: Well I'd

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 like to get a word in edgewise here among the four of
2 us. You say, that if a provision is contained either
3 in the gas pipeline regulations, in the right-of-way
4 agreement or in some other document having the force
5 of law, that only the minister, say in the case of the
6 right-of-way agreement or the National Energy Board
7 in the case of a gas pipeline regulations can waive
8 the requirement that you adhere to that stipulation and
9 if the stipulation is that on the north slope of the
10 Yukon, there can be no construction carried out on
11 snow roads, no use of snow roads after say, April 15th,
12 then there's no way around that unless you go back to
13 the minister or to the officers of the gas pipeline
14 regulations, whoever they are. Now I understand that.
15 Can I just ask you a question before I forget it?
16 Is there such an animal as the ombudsman on the James
17 Bay Project or the Alaska Project?

18 A I -- on James Bay, certainly
19 no. As a matter of fact, we have -- I could talk for
20 hours on the shortcomings on those internal arrangements.
21 In Alaska I think you have nothing but the normal
22 procedures for going through in terms of taking it to
23 Court. At least to my knowledge, there is no ombudsman
24 on the Alaska Oil Pipeline.

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

MR. SCOTT: Mr. Skinnarland,

I understand --

THE COMMISSIONER: Excuse me, Mr.
Scott.

MR. SCOTT: I'm sorry sir.

THE COMMISSIONER: Could we take
a five-minute break.

MR. SCOTT: I'm almost finished.
I've got two more questions.

THE COMMISSIONER: Fine. Carry
on.

MR. SCOTT: Q Mr. Skinnarland,
I understand what you said to the Commissioner about
in the American system, "the Congress", and in our
system, "the government of Canada" being-or its other
agencies being ultimately responsible for changing the
stipulations. The problem that confronts me though is
that a change in stipulation such as an extension of
construction season, you regard as absolutely fundamental,
don't you? That's a fundamental change which you said
under the American model could only be made by the
Congress or the F.P.C. or somebody.

A One that one; I believe
you could possibly give an option to the authorized
officer that between the fifteenth of April and the
twenty-fifth of April, the authorized officer has a
mandate but beyond the twenty-fifth of April, no.

Q All right and under our
system, under your theory, beyond the twenty-fifth it's
a matter for the Government of Canada?

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1
2 A Whoever is the authority
would set those regulations in the first place.

4 Q All right. Now, what I'm
5 suggesting to you is that that deprives the authority
6 of flexibility that may prevent over the long term very
7 damaging consequences. For example, it may be that an
8 extension from the twenty-fifth to the first of May or
9 thereabouts would be damaging to the environment but
10 would save the damage of another year's construction.
11 I'm putting it to you that if you have to go to that
12 level of authority, to have the decision made, you
13 don't have within your authority the flexibility which
14 is desirable.

15 A I suppose this is a two-
16 edged sword, so to speak, that to find the solution
17 which answers both the objectives, you can say, of this
18 flexibility to answer or respond to the work in the
19 field as well as execute or let's say take care of
20 your responsibility to the public interest certainly
21 has some areas where you may question this. But on the
22 other hand, I certainly do not think that it would be
23 advisable to have a lot of these things which can be
24 resolved within the authority because if that is there
25 it thus lends itself to the build-up that you come in
26 on the conversation and say well, if you don't
27 yield on this. well now, I'm going to go to the public
28 and say you're holding up the pipeline.

29 Because if you let that
30 in there in the first place, it just is a temptation to
start to let up. If you know that is unyielding all the

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 planners and the company and the authority are going to
2 deal with that in mind. The only thing we hope then
3 that these stipulations have been wisely made so you
4 haven't invoked some damaging stipulations to upset
5 the pipeline which is worth a nickel.

6 Q Dr. Thompson, I think you
7 wanted to add something.

8 WITNESS THOMPSON: There's no
9 difference between us. The question really is what
10 do you put in the statute and what do you put into
11 regulations and if something is considered that it has
12 to be entrenched, I guess you would put it in the
13 statute but there wouldn't be very many stipulations
14 that would be of that order and you know as well as I,
15 I'm sure, that most regulations that would be issued,
16 including the natural gas ones, will end up with something
17 like winter operations will be conducted only when they
18 don't damage the environment and then it's left to
19 some administrative official to decide when they do and
20 don't. So the question to my mind resolves down to this
21 that somehow either this Inquiry and other bodies that
22 have responsibilities for developing these environmental
23 stipulations have to sort out those which are so vital
24 that they should be entrenched in the statutes or in
25 a regulation. Even regulations can be changed by the
26 Federal Cabinet pretty quickly, if they have to.

27 Q Don't you think that the
28 chances of extended authority in the authority's board
29 of directors are greater if it's an independent Crown
30 corporation or something like the B.C. Energy Board than

Thomson, MacLeod, Skinnarland
Cross-Exam by Scott

1 if it's a representative of three power groups including
2 two governments -- one the daughter of the other?

3 A I agree and I want to come
4 back to this that -- because we haven't made it very
5 clear -- that is, the body we recommended, we didn't
6 consider them to be acting as delegates. They're
7 appointed in the fashion mentioned but they would have
8 their authority as independent individuals not simply
9 as persons to be directed one by native communities and
10 another by the Territorial Government. So really the
11 only difference that we're talking about here is who
12 should sit on this independent authority and we simply
13 offered a simple model of three representatives.

14 If you start going
15 beyond that though, you get into trouble. You talk
16 about an independent body that might be set up as an
17 authority. You have a choice at the beginning, you
18 either go a representative route, that is, you sort
19 of set about to appoint someone who would be acceptable
20 to environmental groups and someone acceptable to the
21 Territorial Government and somebody acceptable to Federal.
22 You either do that explicitly or you're going to be
23 charged with that kind of loading of a Board anyway.
24 I'm not so sure that you could satisfy the public that
25 you created an independent Board unless you explicitly
26 set out to create some kind of a representative system.

27 Q One other question and it's
28 the last. In the whole context, is it seemly that the
29 authorized officer who is the public policeman
30 and the authority should annually sit down to

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1 negotiate its budget with the successful applicant. I
2 mean that to me seems rather odd. I agree that --

3 WITNESS SKINNARLAND: Let me
4 say in this case, my wording is probably poor -- I
5 didn't say negotiate. He has to advise the owner how
6 much money he wants. There is no question in my intent
7 that they negotiate, he tells him but he has an upper limit
8 on how much he can have.

9 Q Well, if I question you
10 on that, I'm usurping a field in which Mr. Steeves and
11 Mr. MacLachlan have much more interest than I and if
12 you can get a blank cheque out of either of them, you
13 are better than I am.

14 Those are all the
15 questions I have and I want to thank you very much.

16 WITNESS THOMPSON: Thank you.

17 THE COMMISSIONER: Any re-
18 examination?

19 MR. EVANS: No questions in
20 re-examination, Mr. Commissioner.

21 WITNESS THOMPSON: May I make
22 a comment, Mr. Commissioner?

23 THE COMMISSIONER: Yes.

24 WITNESS THOMPSON: Reference was
25 made to the report of the working committee and the last
26 time I made inquiries about what there might be coming
27 out of this group because I had heard that such a group
28 existed, I was advised that it was all confidential and
29 so we didn't make any further endeavours.
30

Thompson, MacLeod, Skinnarland
Cross-Exam by Scott

1
2 THE COMMISSIONER: I think they
3 are picking up bad habits from the Inquiry.

4 WITNESS THOMPSON: Well, I was
5 going to say that -- the comment I wanted to make was
6 that I think that we in CARC feel this is a matter of
7 very vital interest to the public, not just within the
8 framework of this Inquiry but in general and I think
9 it's quite frankly deplorable that the study should be
10 going on within government over such a protracted
11 period of time without any effort at all to, as far as
12 I'm aware, to get response from the many, many interested
13 groups in this country who I think could start to
14 shed light on some of these well very obvious problems
15 that are being identified in the questioning.

16 MR. SCOTT: Well, Dr. Thompson,
17 with the greatest respect, I think that's an unfair
18 comment. No one surely in this room feels that the
19 government should downtool simply because the Energy
20 Board and the Berger Inquiry are in the field and should
21 begin to make plans. They've made plans. This report
22 has been around here for some time. If you would like
23 to see it, that could certainly be arranged and you can
24 write to them about it.

25 WITNESS THOMPSON: Is it a
26 publicly available report?

27 MR. SCOTT: Well, it's available
28 here. It's right under my left elbow. Mr. Bayly has
29 seen it. I think --

30 WITNESS THOMPSON: Yes, that's

Thompson, Macleod, Skinnarland
Cross-Exam by Scott

1 right but it's under your left elbow. It's not
2 available generally and what I'm objecting to is not --

3 MR. SCOTT: If your representa-
4 tives were present at the Inquiry, they would have
5 obtained a copy of it.

6 WITNESS THOMPSON: Through the
7 Inquiry. Well, this was fairly recent I guess, was it?

8 THE COMMISSIONER: Let's not
9 prolong this.

10 MR. EVANS: I wonder if
11 maybe your solution would be to have a copy made for
12 us.

13 MR. SCOTT: Well, that can be
14 done but I think it's unfair to make that criticism of
15 government when it's quite unwarranted in this
16 instance. There are many no doubt that are warranted
17 but that isn't one in my respectful view.

18 THE COMMISSIONER: Let me just
19 make one comment that no one expected CARC to be here
20 throughout phase four and throughout the course of the
21 phases of the hearings that had nothing to do with
22 the environment so Mr. Scott's reference to CARC's
23 failure to be here is one which I don't think is al-
24 together fair to CARC.

25 We're not here today though
26 to sort out the question of the propriety of
27 the government's inner workings. Let me just say that
28 this report is one that will, Mr. Evans, be made
29 available to CARC through Mr. Scott's good offices and
30 whether it ought to be hurled from the peace tower to

Thompson, MacLeod, Skinnarland

1 all comers is something that I don't have the
2 energy or the inclination to go into at this stage. We
3 have it. It's available to participants in the Inquiry.
4 Mr. Scott has arranged this. It hasn't been marked as an
5 exhibit for reasons that I don't profess to understand
6 and I'm just beyond the point of trying to understand
7 but there it is and you're certainly welcome to it for
8 purposes of assisting the Inquiry. Because if upon
9 reading it, Mr. Evans, and you, Mr. Thompson, or anybody
10 else at CARC has views you want to express that are in
11 addition to the views expressed by the panel today, write
12 us. Keep those cards and letters coming. Your views
13 in writing will be taken into account. Of course, they
14 will be circulated to all parties and they will have the
15 right to respond. I'm quite serious even though we're
16 beginning to disintegrate here, the hour being 7:30.

17 I want that understood
18 that I want to hear from you if you have something else
19 to say upon reading the working group's report. Is that
20 okay, Mr. Scott?

21 MR. SCOTT: That's fine. I can't
22 copy it today but I'll see that I send Mr. Evans a
23 copy.

24 MR. EVANS: I'm going to be in
25 Yellowknife the next couple of days so I'll get it from
26 you tomorrow and take it back with me.

27 THE COMMISSIONER: Okay, but I'm
28 saying, Dr. Thompson, so that there's no misunderstanding
29 about this. I'm not here to facilitate public examination
30 of anything that happens to intrigue them. This document

Thompson, MacLeod, Skinnarland

1 has been made available to the Inquiry through Mr.
2 Scott's good offices. We're making -- he will make
3 it available to you but that is so that you can
4 assist me.

5 WITNESS THOMPSON: I would like
6 that opportunity. Thank you.

7 THE COMMISSIONER: Well, thank
8 you very much, Mr. Skinnarland and Mr. MacLeod and
9 Dr. Thompson. We appreciate your assistance very very
10 much and I'm very pleased that both of you Mr.
11 Skinnarland and Mr. MacLeod could come and we're
12 grateful for your assistance once again, Dr. Thompson
13 and we will adjourn the hearing until when. 10:00 a.m.

14 MR. SCOTT: 9:30, sir?

15 THE COMMISSIONER: Okay.

16 MR. SCOTT: We have some
17 witnesses who we want to get through tomorrow so I'd
18 be anxious to accommodate them.

19 MR. STEEVES: Sorry how much
20 are we talking about?

21 MR. SCOTT: We have, I think,
22 four witnesses or three witnesses. I don't have my
23 list right here. If you want to try 10:00, we can --

24 THE COMMISSIONER: 9:45.

25 (WITNESSES ASIDE)

26 (PROCEEDINGS ADJOURNED TO OCTOBER 13, 1976)

347	
M835	
Vol. 196	
Mackenzie Valley pipeline inquiry:	
October 12, 1976 Yellowknife	
DATE DUE	BORROWER'S NAME
OCT 12 1976	ALSO

347
M835
Vol 196

MACKENZIE VALLEY PIPELINE INQUIRY

Government
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF
(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS
CROWN LANDS WITHIN THE YUKON TERRITORY AND
THE NORTHWEST TERRITORIES; and
(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY
THAT MIGHT BE GRANTED ACROSS CROWN LANDS
WITHIN THE NORTHWEST TERRITORIES
FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE
and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE
PROPOSED PIPELINE

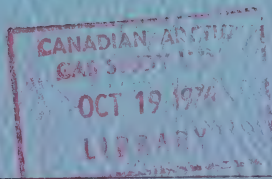
(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.,

October 13, 1976.

PROCEEDINGS AT INQUIRY

Volume 197



APPEARANCES:

Mr. Ian G. Scott, Q.C.,
Mr. Stephen T. Goudge,
Mr. Alick Ryder, and
Mr. Ian Roland, for Mackenzie Valley Pipeline Inquiry;

Mr. Pierre Genest, Q.C.,
Mr. Jack Marshall,
Mr. Darryl Carter,
Mr. J.T. Steeves, and for Canadian Arctic Gas Pipeline Limited;
Mr. Gerry Ziskrout,

Mr. Reginald Gibbs, Q.C.,
Mr. Alan Hollingworth,
Mr. John W. Lutes, and for Foothills Pipe Lines Ltd.;
Mr. Ian MacLachlan,
Mr. Russell Anthony,
Prof. Alastair Lucas and
Mr. Garth Evans, for Canadian Arctic Resources Committee;

Mr. Glen W. Bell and
Mr. Gerry Sutton, for Northwest Territories Indian Brotherhood, and Metis Association of the Northwest Territories;

Mr. John Bayly and
Miss Lesley Lane, for Inuit Tapirisat of Canada, and The Committee for Original Peoples Entitlement;

Mr. Ron Veale and
Mr. Allen Lueck, for The Council for the Yukon Indians;

Mr. Carson Templeton, for Environment Protection Board;

Mr. David H. Searle, Q.C.,
for Northwest Territories Chamber of Commerce;

Mr. Murray Sigler and
Mr. David Reesor, for The Association of Municipalities;

Mr. John Ballem, Q.C., for Producer Companies (Imperial Shell & Gulf);

Mrs. Joanne MacQuarrie, for Mental Health Association of the Northwest Territories.

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347
M835
Vol. 197

I N D E XPage

WITNESSES FOR M.V.P.I.:

Joseph A. BERGASSE

- In Chief

30980

- Cross-Examination by Mr. Bayly

31010

David W. NORTON

- Cross-Examination by Mr. Veale

31026

- Cross-Examination by Mr. Bayly

31117

- Cross-Examination by Mr. Hollingworth

31150

Martin H. ROGOL

- In Chief

31078

- Cross-Examination by Mr. Bayly

31100

- Cross-Examination by Mr. Veale

31109

- Re-Examination

31113

EXHIBITS:

868 Qualifications & Evidence of D. Quirin 31025

869 Errata Sheet, M.V.P.I. D.O.T. Submission 31025

870 Report "Environmental Compliance and the
Public Interest during Construction of
Trans-Alaska Pipeline" by Zemanski 31116

871 Statement of Under-Secretary K. Frizzell 31116

872 Qualifications & Evidence of M.H. Rogol 31154

873 Annual Report, 1975, State of Alaska 31154

1 Yellowknife, N.W.T.

2 October 13, 1976.

3 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

4 MR. SCOTT:Mr.Commissioner, before
5 we begin with Mr. Bergasse's evidence, I wonder if I
6 could ask that the next exhibit be made the evidence
7 that was circulated yesterday on the subject of
8 inflation by Professor David Quirin. Perhaps Miss
9 Hutchinson can give that evidence a number and I will
10 provide her with a copy if she doesn't have one.

11 The second matter is that you
12 will recall that a submission was made or evidence was
13 submitted by Commission counsel with respect to
14 transportation problems. A panel was called which
15 filed an elaborate brief. That brief has some errors
16 in it and I would like to file as the next exhibit an
17 errata sheet that relates to the page numbers that are
18 contained in the brief that is marked as an exhibit.

19 The third matter that I'd like
20 to raise refers to the statement that Mr. Steeves made
21 on Thursday, October 7th last with respect to mal-
22 functioning of the test apparatus related to frost
23 heave experiments. In his statement, Mr. Steeves says
24 in the last paragraph,

25 "That it will be the final submission of Arctic
26 Gas to this Inquiry that the matter of frost
27 heave will receive further consideration and
28 that this Inquiry is not in a position to make
29 any specific findings in this regard".

30 Now, I take that sentence to be

1 a preview of the position that Arctic Gas proposes to
2 take when final submissions are made on the subject
3 of frost heave. It is needless to say a statement
4 that you will have to consider and there may be
5 submissions made by others that you are notwithstanding
6 the observations of Arctic Gas in a position to make
7 some findings about the subject of frost heave and the
8 present ability of the applicant to meet the problems
9 of frost heave.

10 So, I take that statement
11 simply as a preview of the argument that Arctic Gas
12 will make in the final submission. I do think it
13 would be helpful though in approaching the matter if
14 I could ask Arctic Gas to provide as soon as possible
15 answers to the following questions of which there are
16 five:

- 17 1. Can Arctic Gas confirm that the malfunction
18 reported in Mr. Steeves' statement is in the
19 apparatus that has been used by Northern
20 Engineering Services in testing samples to
21 determine shut-off pressure and that the
22 measurements that are in question as a result
23 of the malfunction, are the laboratory heave
24 test data listed as Item C in the following
25 quotation from the conclusion to what is
26 identified as a summary of a method for predicting
27 frost heave published by Northern Engineering
28 Services, March, 1975, page fifteen, and the
29 quotation to which we refer Arctic Gas is as
30 follows:

"Within a framework of the assumption made in the formulation of this semi-empirical method, relationships have been derived to calculate readily the amount of frost heave under a chilled gas pipeline. The data required for solution are:

- a) the pipeline configuration, depth of burial, depth of surcharge
- b) soil data, moisture content, grain size, stratigraphy;
- c) laboratory heave test data, shut-off pressure, relationship between segregational heave rate and effective stress
- d) geothermal prediction for depth of frost versus time

2. In the light of what Arctic Gas knows about the malfunction, are the correct values of the shut-off pressure larger or smaller than the values that have been determined by Arctic Gas earlier?
3. Does this change imply that the maximum shut-off pressure that Arctic Gas will have to design for will be higher than its earlier estimates of 4,000 PSF?
4. It would be extremely helpful if Arctic Gas could provide as soon as possible an opinion on the magnitude of the difference between the maximum determined and correct shut-off pressure.
5. It would be extremely helpful if Arctic Gas could as soon as possible provide an opinion as to whether the heave pressures that could be

1 encountered are larger than could be controlled
2 by deep burial and/or surcharge berm?

3 I'd be grateful if Arctic Gas
4 could consider those matters and let us know their
5 position at the earliest convenient time. Those are
6 all the matters I want to deal with first, Mr.
7 Commissioner.

8 THE COMMISSIONER: Excuse me,
9 Mr. Scott. Mr. Ziskrout, when this matter came up
10 last Thursday I indicated to Mr. Steeves, Mr. Marshall
11 and you all of whom were then in attendance that I
12 expected the matter would be pursued and indicated
13 then that I should like Arctic Gas to advise the
14 Inquiry by Friday of this week regarding the matters
15 that the Inquiry would seek to have clarified.

16 Now, Mr. Scott has indicated
17 the matters that the Inquiry seeks to have clarified.
18 I want Arctic Gas, so far as they are in a position
19 to do so, to answer these questions by Friday of this
20 week before the close of the evidence. If you are not
21 in a position to answer all of these questions by
22 Friday of this week, I want you to answer as many of
23 them as you are in a position to answer.

24 If you are unable to answer
25 any of them fully, because you do not know the answers,
26 I want you to tell me if that is so by Friday of this
27 week. The questions, it should be apparent, go to
28 the foundation of Arctic Gas' theoretical basis for
29 constructing this buried gas pipeline.
30

1 And the Inquiry which has, I believe, examined this
2 whole question of frost heave more extensively than
3 any other tribunal, is most anxious that so far as
4 it lies within the capacity of all of us to find out
5 all that we can about this fundamental problem,
6 should do so in time for this Inquiry to give its
7 best advice on the subject to the Minister of Indian
8 Affairs & Northern Development and his colleagues.

9 So I shall want to hear from
10 Arctic Gas by the close of evidence on Friday. I made
11 that clear to Mr. Steeves, Mr. Marshall, and you last
12 week, and I'm making it clear once again today.

13 MR. ZISKROUT: Yes sir, and
14 Arctic Gas fully understands your position as stated
15 on Thursday, and is doing all in its power to arrive
16 at answers to the various questions.

17 I might ask Mr. Scott if I
18 can have -- it seems to me he's got the questions
19 all typed out -- and if I could please have a copy of
20 that I would be able to --

21 THE COMMISSIONER: Well, I
22 think it might even be better if you asked the
23 Official Court Reporters to provide a transcript of
24 what has been said within the next hour or so.

25 MR. SCOTT: I think that can
26 be arranged. Those are the preliminary matters.

27 Commission counsel's next
28 witness is Joseph A. Bergasse, who has been sitting
29 there no doubt mystified at the things that have been
30 going on, as I told him he was going to be the first

J. A. Bergasse
in chief

1 piece of business this morning.

2 MR. BAYLY: Yesterday I
3 distributed and filed a copy of the evidence of Mr.
4 Zemanski, who will be a witness with Mr. Beakhust on
5 a regulation panel on Friday. Mr. Zemanski's name
6 has been spelled incorrectly. It should be Z-E-manski.

7 MR. SCOTT: O.K. Mr. Bergasse
8 will be giving evidence as director of economic
9 developement and tourism.

10
11 JOSEPH A. BERGASSE, sworn:

12 DIRECT EXAMINATION BY MR. SCOTT:

13 Q Mr. Bergasse, I under-
14 stand that you have a Master of Arts, Bachelor of
15 Commerce degrees.

16 A That's right, yes.

17 THE COMMISSIONER: Excuse me,
18 Mr. Scott. If this is in writing, I would like a
19 copy. Is there another copy around?

20 MR. SCOTT: It was circulated
21 so long ago, it seems to have -- the department will
22 provide.

23 Q Mr. Bergasse, after your
24 military service you were from 1947 to 1954 the assist-
25 ant manager of Ceylon & Indian Tea Distributors,
26 Toronto, is that correct?

27 A That's right, sir.

28 Q From 1954 to 1964 you were
29 development officer with the Department of Trade and
30 Commerce -- sorry, Trade and Industry for the Province

J.A. Bergasse
In Chief

1 of Nova Scotia. Is that correct?

2 A That's correct.

3 Q Yes. From 1964 to 1967
4 you were the regional co-ordinator, area development
5 agency, Department of Industry, Ottawa.

6 A That's correct.

7 Q From 1967 to 1969 you
8 were assistant general manager of Industrial Enterprises
9 Inc., which is a provincial Crown corporation in
10 Prince Edward Island.

11 A That's correct.

12 Q And from 1969 to the
13 present you have been chief of industrial development,
14 assistant director and now director of the Department
15 of Economic Development and Tourism of the Government
16 of the Northwest Territories.

17 A That is correct, yes.

18 Q And during that period,
19 I understand, you have also acted as superintendent
20 of Fish and Wildlife Service for the Government of
21 the Northwest Territories.

22 A That's right, sir.

23 Q And I'm reluctant to
24 raise the last item in your curriculum vitae because
25 we had evidence yesterday on the operations of the
26 Water Board in the Northwest Territories, but I under-
27 stand that you have been chairman of the Northwest
28 Territories Water Board and have been vice-chairman
29 and a member of the Board since 1972.

30 A That is correct, sir.

J.A. Bergasse
In Chief

1 Q If you're not careful
2 you may get some cross-examination about Water Board
3 matters that weren't anticipated. We'll see what
4 happens. Mr. Bergasse, could you outline your
5 responsibilities relative to economic development in
6 the Northwest Territories?

7 A Yes sir. I think the most
8 effective way to answer this question would be to
9 quote the first goal mentioned in the stated govern-
10 mental goals of the Government of the Northwest Terri-
11 tories. Controlled growth, expansion, and development
12 in the north in keeping with the aspirations of the
13 people, their culture, position, pursuits, lifestyles,
14 and skills, while affording useful and meaningful
15 employment opportunities at all levels of society.

16 Within this context, the
17 objectives assigned to the department by the Commissioner
18 are as follows:

19 . To develop a healthy and expanding economic base
20 in the Northwest Territories compatible with northern
21 lifestyles and to ensure maximum benefits to territorial
22 residents of entrepreneurial opportunities in the
23 Northwest Territories.

24 Sub-objectives under this
25 would be to assist in the development of tourism in
26 the Northwest Territories and to maximize benefits
27 to territorial residents from such development.

28 To increase the contribution
29 of the fish, forest and agriculture resources to the
30 Northwest Territories, emphasizing the aspects of

J.A. Bergasse
In Chief

1 preservation and protection of traditional lifestyles.

2 To assist in the establishment
3 and development of industries and service operations
4 in the Northwest Territories and to maximize the benefits
5 to territorial residents from such development.

6 To assist in the development
7 of non-renewable resources and to ensure maximum
8 benefits to territorial residents from such resources
9 within the limitations of the Northwest Territories
10 Act.

J. A. Bergasse
In Chief

To develop and promote the utilization of a resident labour force throughout the Northwest Territories. These objectives, point, we feel, toward a distinctive style of economic development, that is practical, positive and realistic, while at the same time flexible and fully sensitive to the human factor. The department is presently reviewing its structural organization and programs, and it is anticipated that more efficient method of program delivery will evolve in that responsibility for delivery of our programs will be delegated to the field to the greatest possible degree. Concurrent with this will be a complete review of all programs in the context of the assigned goals and objectives and the end result will be, that the department will be better able to serve its current population who are the people more efficiently and effectively. I should mention here that since that this evidence was written, we have completed and had approval for a new organization and structure. This is in the process now of being implemented. We have not as yet conducted a review of our program.

Because of this I have limited my evidence to specific areas of responsibility within the department and it would not be possible to go into detail on the programs of the department except in the most general terms.

Q Mr. Bergasse, what are the programs of the department?

A The general approach to

J, A. Bergasse
In Chief

1 economic development employed by the department, is,
2 perhaps most clearly catagorized in terms of the services
3 provided to three distinct client groups. Services
4 provided to businesses, operation of government owned
5 businesses or facilities, primarily to provide employ-
6 ment in communities with limited employment alternatives
7 and services to the northern labour force.

8 The department provides services
9 to foster, private and co-operative business development
10 similar to those provided in the provinces including
11 loans, grants, counselling and promotion. It acts in
12 an important capacity directly as an entrepreneur to
13 develop new businesses to the point at which they can
14 be run privately or to provide essential services and
15 in this capacity is operating over thirty projects across
16 the territory. With the addition of the employment
17 division, it focuses training and liason resources to
18 provide opportunities for the labour force in the
19 Northwest Territories. Our Chief of employment, Mr.
20 Jack Witty, I believe, will be appearing before you
21 to discuss the employment and training aspects of our
22 department's programs, so I would propose to concentrate
23 on our responsibilities, vis-a-vis, the business sector.

24 Q Mr. Bergasse, would it be
25 convenient for you to provide to me by letter, a list
26 a short list, without any detail, of the thirty pro-
27 jects that are presently being operated by the department
28 in the territory?

29 A Yes sir, I would be very
30 happy to do that. They range quite wide in scope from

J. A. Bergasse
In Chief

1 retail stores to fish canneries to laundries.

2 Q Well perhaps you can just
3 give us the list by letter with the name of the project
4 and a brief, one sentence description of its nature.

5 A I'd be very happy to do
6 that.

7 Q Yes. Mr. Bergasse, what
8 has been the department's role with respect to the
9 identification of entrepreneurial opportunities that are
10 related to the pipeline?

11 A The department was named
12 by the federal government, the lead governmental agency
13 to identify possible direct and indirect benefits that
14 might accrue from the pipeline. In identifying these
15 opportunities, the following general guide lines were
16 used.

- 17 1. Greater emphasis would be placed on opportuni-
18 ties that were of a long term nature, rather
19 than those that would only last for the period
20 of construction.
21 2. Opportunities identified would be considered
22 wherever possible on the basis of their viability
23 without a pipeline.

24 Q What action has the depart-
25 ment initiated in this area?

26 A The specific action that
27 we have initiated is as follows:

28 A firm of consultants was commissioned to carry out
29 a study financed in conjunction with the environmental
30 social program to identify entrepreneurial opportunities

J. A. Bergasse
In Chief

1 which might result from pipeline development in the
2 Northwest Territories.

3 Five potential businesses were
4 reviewed and studied. A copy of this report, an
5 entrepreneurial opportunity study of the Mackenzie Highway
6 and Pipeline corridor written by Resources Management
7 Consultants Limited has been forwarded to the Commission
8 and participants and is available from my department
9 on request. Consultants were also commissioned to in-
10 vestigate the feasibility of a mill to supply pilings
11 and other construction timbers for pipeline and gas
12 plant construction. A study of location and feasibility
13 of a pole yard and saw mill operation in the Mackenzie
14 Valley written by C. D. Schultz & Company Limited and
15 Resource Management Consultants Limited. This study is
16 also available from my department.

17 A co-ordinator of business
18 development, Mackenzie Valley Pipeline, was appointed.
19 The following tasks have been accomplished or initiated.

- 20 1. Organizing a development advisory board to
21 include representatives from the native
22 organizations, business community, re-
23 source extraction companies and this de-
24 partment.
- 25 2. Carry on a liason function with the Chambers
26 of Commerce, Business Opportunities Develop-
27 ment Board, transmission companies, municipali-
28 ties and native organizations and various
29 government agencies.

J.A. Bergasse
In Chief

1 3. Gathering information from northern businesses
2 to ensure their inclusion on listings maintained by
3 the Federal Department of Supply & Services, and by
4 the Government of the Northwest Territories, Department
5 of Finance, Supply Services Division, to provide more
6 opportunities for these northern businesses to supply
7 goods and services to both governments.

8 4. Acting as a forwarding agency for tender calls
9 to the applicable area to allow local businesses to
10 have the opportunity to bid.

11 5. Involved in a committee developing a program for
12 business management, training and counselling.

13 Q What action has been
14 taken to follow up on the various opportunities that are
15 identified in the report on entrepreneurial opportuni-
16 ties?

17 A The action was initiated
18 as follows:

19 1. On concrete weights for sinking of pipeline.
20 Discussions were held with various companies and/or
21 southern-based groups who had expressed an interest
22 in this type of operation. Their involvement was
23 considered on a joint venture contractual basis to
24 provide management and technical expertise with local
25 ownership and participation as an integral part of the
26 project. No firm decision was taken as this type of
27 operation would only last for the duration of construc-
28 tion and planning must therefore be tied to a decision
29 on application.

30 2. Greenhouse hydroponic growing of fresh vegetables.

J. A. Boudasse
in chief

1 The study examined the economics of hydroponic garden-
2 ing in conjunction with pipeline compressor stations.
3 The cost of production would be too high in relation
4 to the cost of imported vegetables to ensure financial
5 viability. However, the department has a program
6 designed to provide greenhouse facilities to remote
7 communities in the territories where transportation
8 infrequency and costs make the idea more possible.
9 One pilot operation is under way in Sanikiluaq and
10 another is being constructed in Frobisher Bay as a
11 joint venture with Inuit Tapirisat of Canada.

12 3. Prefabricated housing. This was by far the
13 most interesting and indications were that it could
14 be viable without a pipeline. Given present levels
15 of house construction in the Northwest Territories,
16 the pipeline would be, as it were, gravy. The basis
17 for this would be the provision by the Government of
18 the Northwest Territories of a guaranteed purchase of
19 a minimum number of units, 150, annually for a period
20 from three to five years. Details are now being
21 worked out and it is anticipated that such an opera-
22 tion could commence in the near future. At the same
23 time, a high level of economic activity is required
24 to sustain such an operation, based on private
25 sales. Without development of some kind, provision
26 of a new housing -- of new housing must be almost
27 entirely based on government subsidy.

28 4. Operations and maintenance. Services required
29 to maintain pipeline facilities including compressor
30 stations, airstrips, right-of-way and other communication

J.A. Bergasse
in Chief

1 facilities were identified and studied. Provision of
2 these services through local contractors was discussed
3 and agreed in principle with one of the applicants.
4 Equipment, financing, and organizational structure
5 required to provide these services locally were
6 determined. It was estimated that annual revenues in
7 the order of \$2.5 million would be generated from
8 such services.

9 5. Sawmill/pole yard. Investigation revealed that
10 the requirements for poles, pilings and other rough
11 timbers generated by pipeline and gas plant construction
12 could be met by small mobile mills as far north as the
13 Lower Mackenzie. Environmental considerations, however,
14 make it doubtful whether operators would be permitted
15 the high-grade poles and pilings. To obtain full
16 utilization of the forestry resource, a fully inte-
17 grated commercially sized sawmill/pole yard would have
18 to be established. Further study of the resource
19 indicated that the Fort Simpson-Liard Valley area
20 would have to be the location because of the abundance
21 of the forestry resource there.

22 Q Are there any other
23 major entrepreneurial opportunities related to the
24 development?

25 A One major opportunity
26 would be to utilize the Hire North concept on a
27 contractual basis for right-of-way clearing. I will be
28 covering Hire North next, so will not go into any
29 major description here. Other opportunities will be
30 reviewed and other information distributed as developed

J.A. Bergasse
In Chief

1 /through
2 research and liaison with the companies involved.

3 Q What is your responsi-
4 bility in relation to Hire North?

5 A The responsibility for
6 this program was transferred to my department in
7 April, 1975, but in order to put today's picture in
8 context I would like to briefly review the history of
9 Hire North. The concept began in Hay River in
10 1968 when local concerned citizens and the government
11 formed Work Arctic to help people off welfare and
12 into employment. This remained a purely local approach
13 to employment problems until the Government of Canada
14 announced the construction of the Mackenzie Highway in
15 1972. One of the criteria involved with the announce-
16 ment was the northern people were to be employed in
17 every capacity possible. Our government decided that
18 existing training programs did not go quite far enough
19 in preparing people for employment in highway construc-
20 tion. As a result, the Federal Government agreed to
21 assign a stretch of the Mackenzie Highway to be built
22 as a training project by trainees. This allowed us
23 to design a training program that was able to
24 duplicate to a very great extent actual construction
25 techniques and more important, attitudinal approach
26 to fast-based heavy construction. Trainees were
27 taken out to the training section, tested at various
28 work situations, and then given the opportunity to
29 specialize on certain equipment. When a man was
30 trained to a reasonably competent level, he was then
recommended to one of the contractors building the road.

J.A. Bergasse
In Chief

1 In addition, our government was able to convince
2 Federal Department of Public Works that the right-of-
3 way could be hand-cleared by the northern work force
4 as well and as speedily as it could be done by machine.
5 Hire North was given contracts for right-of-way
6 clearing, and this supplied several hundred jobs
7 during the peak season.

8 As an illustration, during the
9 first winter, '72-'73, 50 miles of right-of-way were
10 cleared by an average work force of 70 men. The next
11 winter, '73-'74, 107 miles of right-of-way were
12 cleared by a work force averaging 100 per month. The
13 training program was operating concurrently with the
14 contract, as we regarded the training as having a
15 more lasting benefit. With the cessation of construc-
16 tion on the Mackenzie Highway, the Hire North operation
17 has moved entirely into a training mode. Presently
18 there are 50 men training and/or employed on heavy
19 equipment operating at the site. Hire North continues
20 to be a popular plan for construction training as it
21 was when involved in clearing operations and considered
22 to be a good place to work.

23 The appendices that I've
24 circulated supply the statistical information that
25 you may find useful.

26 Q I wonder if you could
27 give us your assessment of the success of Hire North?
28
29
30

J. A. Bergasse
In Chief

A Since the start of the training program in April, 1973, approximately one hundred people received some degree of training as operators and at least sixty percent of these have worked or are presently working in the construction industry. In addition, we have trained kitchen help, clerks, service men, machanics helpers, chain saw mechanics, et cetera.

We think that in all fairness we could say that Hire North has been a qualified success for the following reasons: The right-of-way clearing gave employment to a large number of native people, some of whom had very little experience of wage employment. I would estimate that four to five hundred individuals have had work with Hire North at one time or another over the fall/winter seasons that the clearing work was underway.

The training part of the project has produced and is continuing to produce trained native people who we feel are successfully finding work in the wage economy. When this was written, sir, I did not have a breakdown of the names of the people we had trained and to the best of our knowledge, where they're presently located. I received that yesterday, so I'd be pleased to table that.

MR. SCOTT: Do you have that with you today or is that something that you'll provide?

A I could provide it today.
I've just got the one copy though unfortunately.

Q Well, Mr. Commissioner,

J. A. Bergasse
In Chief

1 what I propose is that at the end of Mr. Bergasse's
2 evidence, be tabled with the appendices that he has
3 and he can provide that appendices perhaps later today
4 when you can have a copy made, Mr. Bergasse. Is that
5 all right?

6 A That would be fine.

7 Q What are the main problems
8 that have been encountered with Hire North, particularly
9 in the camps and the nearby communities?

10 A With regards to the
11 camps, we have had very few problems with alcohol as
12 the camps are run on a strictly no booze basis. On
13 the few occasions when alcohol has been brought into
14 the camps, problems have arisen but when this happened,
15 disciplinary action was taken and the person or persons
16 responsible was fired. We have had women employed in
17 the camp from the outset and this has not caused any
18 problems to the best of our knowledge.

19 In fact, their presence has
20 a good influence on the camp atmosphere in that the
21 men behave themselves and keep themselves and the
22 facilities clean and tidy. One of the main problems
23 we have had concerns the loss of personnel at turn-
24 around. Hire North operates on a four week on-one week
25 off basis, and we would estimate that on an average
26 we have lost perhaps temporarily about ten percent of
27 those that go home. However, because of the apparent
28 popularity of Hire North, we have no problems with
29 placing them with others. Eventually, two or three
30 months later, the person returns.

J. A. Bergasse
In Chief

For the right-of-way clearing, this problem helps spread the work around the communities. In a way this was a good thing for the workers but for the training part of the project, it was somewhat disruptive.

Q What success did Hire North have in placing competent trainees?

A The main problem we've had and still have is placing trained persons with other contractors. There have been few contracts let for construction of the Mackenzie Highway and for those that were let, there was some problems placing native people and keeping them on the job. Initially the contractors were reluctant to employ Hire North's trained people because of the fear that their expensive machinery would be damaged.

However, there is a clause in the contract that requires the contractor to employ native northerners and once on the job, in general, the contractor finds that his fears are largely unfounded. This has been the case with one spread where after a couple of months thirty percent of his work force is native, a good proportion of whom are operating machines. We believe that a high proportion of native people in the work force is the main reason for them staying on the job. The first contractor employed few native people and these left after a short time because they did not feel comfortable.

Whereas the atmosphere with later contractors where thirty percent of the work force

J. A. Bergasse
In Chief

1 is native, appears to be good for retention. In fact,
2 we think that the main reason for the success of Hire
3 North is that it is by and large an all native project
4 with a sense of comradery and identity giving a
5 comfortable atmosphere in which the native people
6 can work.

7 Q Mr. Bergasse, what effect
8 with the pipeline have on existing businesses and
9 employment generally, in your view?

10 A We feel that the con-
11 struction and operation of a pipeline would stimulate
12 sales of a wide variety of businesses in addition to
13 those already mentioned either through direct purchases
14 or indirectly through higher levels of economic
15 activity. Adversely, it could seriously effect their
16 ability to retain labour in the face of high pipeline
17 wages, particularly in those sectors in which it is
18 difficult to pass on higher cost to the consumers, as
19 in the fishing industry, for example.

20 There could be inflationary
21 effects on local prices in the short run though it
22 should be noted that larger business volume may improve
23 service and availability where supply expands. This is
24 why our efforts have focused on projects with long term
25 potential and why measures to ensure that northern
26 businesses and labour can take advantage of development
27 opportunities must not be pushed so far as to rob other
28 private and public sectors of labour and financial
29 resources.

30 For example, special funding

J. A. Bergasse
In Chief

1 may be required to maintain activity in non-pipeline
2 related sectors. In the event that no resource
3 development occurs in the Mackenzie, the economic
4 implications are that the general level of business
5 activity and employment will fall. A number of existing
6 businesses will close, municipal tax bases in those
7 communities that finance their own services will shrink
8 and new employment opportunities may fail to appear.

9 Mr. Witty's evidence will
10 indicate that a growing unemployment problem would
11 occur, particularly amongst the young working age
12 people who are forming an increasingly large part of the
13 population. On the whole, this group will have passed
14 through the school system with expectations of a high
15 standard of living and ready disposable income. If
16 we wish to provide an employment alternative to welfare
17 dependency, or the conditions of a permanent life on
18 the land, it is our judgment that considerable amounts
19 of government funding will be required to provide
20 subsidized employment on a continuing basis for the
21 permanent residents of the Northwest Territories.

22 I shall touch on some of the
23 projects and businesses that are now being supported
24 and encouraged by my department later in my evidence.

25 Q Mr. Bergasse, in your
26 opinion, what future has the joint venture model with
27 respect to potential business operations?

28 A The joint venture model,
29 to my knowledge, has only been tried in one operation
30 to date and that is the DeneMat Construction

J. A. Bergasse
In Chief

1 Company in Fort Simpson. This department unfortunately
2 has not been as closely involved as it could have been.
3 The Department of Indian and Northern Affairs through
4 their Indian Economic Development Program has played
5 the lead role on the government's side, and I would
6 suggest that someone from that program, under one of
7 the principals of the company, be asked for their views
8 on that particular operation.

9 The joint venture is just
10 another vehicle, however, that can be utilized to get
11 native people into business. In effect, with it the
12 expertise required is purchased through equity
13 participation by a company or an individual possessing
14 the necessary expertise. Usually this participation
15 is for a limited period and if the operation is
16 successful, this minority party is bought out at a
17 profit to him.

J. A. Bergasse
In Chief

1 We have tended to stay away
2 from such arrangements unless the financial participa-
3 tion by the southern based company individual is such,
4 that it is not token and represents as close the full
5 value as possible for the equity involved. We have
6 preferred the route of the government assuming the role
7 of entrepreneur, taking the risk and through an educa-
8 tional process, training native people to gradually
9 assume the management of a given operation.

10 Q We've heard in other
11 evidence before the Inquiry that a problem appears to
12 exist with bonding, what, if anything, is your depart-
13 ment been able to do, assisting here?

14 A The problem is that the
15 local contractors, as I understand, they have not
16 established an adequate track record to interest south-
17 ern based bonding companies. My department is working
18 on this particular aspect and have in a minor way
19 assisted small contractors with accountable grants
20 under our assistance to industry program. This is a
21 program with limited funding. Also, our understanding
22 is that pipeline companies are prepared to accept bids
23 from local contractors without the requirement for
24 performance bonds.

25 Q What is the present
26 funding state of that program?

27 A The assistance to industry?

28 Q Yes.

29 A It's roughly \$300,000.00.

30 Q What, in your judgment

J. A. Bergasse
In Chief

1 is the -- is adequate to provide a solution to these
2 bonding problems?

3 A I would hate -- I would
4 have to pluck a figure out of the air. We're working
5 on this now, but I would imagine that something in
6 the neighbourhood of perhaps and I'm assuming -- I'm
7 not taking into account a pipeline.

8 Q Right.

9 A At the present state I
10 would imagine somewhere in the neighbourhood of one
11 half a million to \$600,000.00 might do it, on a
12 revolving basis.

13 Q Yes. And that's assuming
14 that the assistance to industry program has to take
15 the bulk of the load and that no -- that you exhibit
16 no ability to interest southern bonding companies in
17 the job?

18 A That's right. To date,
19 we have been remarkably unsuccessful in interesting
20 southern based bonding companies.

21 Q What potential pipeline
22 impact do you see on money management in the North-
23 west Territories Communities and how can that be dealt
24 with?

25 A We have asked consultants
26 to look at this question in a context of demands for
27 improved financial services which have been expressed
28 by communities across the Northwest Territories.
29 These consultants are identifying needs for financial
30 services. Existing financial services will of course,

J. A. Bergasse
In Chief

1 be approached to discuss the feasibility of meeting
2 the existing demands through various means, such as
3 branch banking, agent banking, government saving offices
4 and credit unions. Based on discussions with the
5 consultants, the major findings of the study I expected
6 to include the following points:

7 1. Present level of financial services available
8 in many isolated communities is inadequate,
9 especially in the eastern Arctic. Demand for
10 services is expected to increase acutely as
11 more wage employment becomes available in
12 some of these more isolated settlements.

13 2. The capacity of the banking system to provide
14 community service is limited. Branch banks
15 are uneconomic in smaller communities.
16 Flying banks are losing propositions for the
17 commercial banks and in any case, tend to
18 service those citizens who are capable of
19 banking by mail. Agent banking offers a
20 higher level of service than flying banks
21 but, cost more to operate.

22 3. The credit union movement does not at present
23 have the resources to expand its services to
24 the more isolated settlements. Further, it
25 may be unrealistic to assume that the credit
26 union movement would subsidize uneconomic
27 operations in isolated communities, even if
28 the movement did have the resources to do so.

29 4. The ability of post offices to provide money
30 order services to communities could be im-

J. A. Bergasse
In Chief

1 proved if the post office were willing to provide
2 adequate training to community postmasters.

3 5. Sufficient level of financial servicing can
4 be supplied to communities by their local
5 co-operative, where management expertise
6 is proven. However, it must be recognized
7 that management skills are lacking in many
8 of the isolated settlements.

9 6. Resident knowledge of the mechanics of credit
10 union operation is extremely limited in some
11 of these isolated communities. Credit union
12 growth will naturally entail a lengthy educa-
13 tion process. It would be most appropriate
14 for local institutions to evolve from savings
15 clubs to savings and loan associations to
16 credit unions at a pace consistent with
17 people's understanding and capabilities.

18 7. It is possible that the increased demand for
19 financial services enduced by hydro-carbon
20 development, would attract disreputable fly
21 by night savings and loan companies. The
22 study will suggest changes to the credit
23 union ordinance, so that the savings and loan
24 companies may be more closely regulated.
25 The report of the consultants is expected
26 early in the fall.

27 Q Well, it's early in the
28 fall. Have you got it?

29 A No, we haven't got it.

30 Q When do you anticipate

J. A. Bergasse
In Chief

1 now, that you'll have it?

2 A I think in that --

3 Q Shall we try later in
4 the fall?

5 A I could -- let's say a
6 month to two months.

7 Q All right. Mr. Bergasse
8 with the permission of the superiors to whom you have
9 to respond of course, could you provide to the Com-
10 mission, a copy of that report when it's available?

11 A I'd be very happy to
12 do so.

13 Q Thank you very much.
14 Mr. Bergasse, what is the role of your department,
15 with respect to renewable resources?

16 A Our role is a joint role
17 that is shared with the federal government. The way
18 we describe it, is that they manage the resource while
19 we develop the capacity to utilize the resource.
20 Three areas could be sited as examples of our in-
21 volvement. They are, first one would be forestry,
22 sawmills. The department became involved with two
23 sawmill operations that appeared to be in difficulty
24 on the verge of bankruptcy. Both these mills provided
25 the main source of employment in the two communities
26 where they were located. i.e. , Fort Resolution and
27 Jean-Marie River. A salvage operation was undertaken
28 and with the support of both communities, the mills
29 are back in business with financial assistance arranged
30 through a chartered bank. Both are now incorporated

J. A. Bergasse
In Chief

1 comapnies with a Board of Directors and an Executive
2 Committee which will run the operation. There are
3 government members on those Boards. These will be
4 withdrawn in the near future, but they are in the
5 minority and they are there primarily to offer advice
6 where required. This by enlarge, has been an educa-
7 tional process with the management. The Board learning
8 on the job, the Board of Directors rather, learning
9 on the job with our assistance.

10 We also assist the mills to
11 market their output. This service, I should point
12 out, is available to all mills in the Northwest
13 Territories. This year, it appeared that the total
14 output had been disposed of with orders from the Housing
15 Corporation and the company who had been awarded a
16 contract to build houses, however, some of the Housing
17 Corporations orders have been cancelled and alternative
18 markets are now being sought. A major outlet of course
19 could be a pre-fab housing plant. Furniture plant.
20 This operation was started in Hay River as a result
21 of work carried out by a local entrepreneur, Mr.
22 Dave McNab. We worked with him and using the purchasing
23 power of the government of Northwest Territories, were
24 able to set up a plant to manufacture furniture. This
25 plant is now in operation and Mr. McNab is being trained
26 in all aspects of furniture manufacturing. Ultimately
27 he will be given the opportunity to take over the
28 entire operation. As of now it is being run and funded
29 by this government. Plans are underway to install a
30 dry kiln and which will permit the purchase of sizeable

J. A. Bergasse
In Chief

quantities of lumber from local mills.

Fisheries, the major fishery is that one on the Great Slave Lake. There would be no point in going into the problems real or imagined that have plagued with fishery. Plans are underway now, to see what can be done to alleviate these. Work is being carried out in two areas, (b) more efficient methods of harvesting the resource, thus providing more throughput for the plant and (b) more efficient methods of handling the resource from the lake to its ultimate market. The end result we expect, will be a better return to the fisherman, which is the main reason for doing it at all. In the meantime the government of the Northwest Territories is supporting the prices so that there will be no loan on those paid last year. Other fisheries are being tested, for example, the Delta, and it should be noted that in conjunction with the fish and wildlife service of this government, and federal fisheries, the resource in a given area is tested to ascertain whether it can support a commercial fishery. If it can support one, we can develop it to the point where it can be turned over to a local organization to operate. An example of this is, Cambridge Bay where a viable Char Fishery is now in operation. It should be emphasized, that at all times, domestic needs are protected. Sports fishery is also considered, if the returns to the local economy would be greater.

J.A. Bergasse
In Chief

1 Agriculture. Very little has
2 been done in this area pending the development of an
3 agriculture policy in the Northwest Territories.

4 Q The next question you've
5 asked me to ask you looks a little strange, but I'll
6 ask it anyway. What, in your opinion, Mr. Bergasse,
7 does "northern development" mean?

8 A I try to stay away from
9 philosophying, but I'm afraid I got sort of carried
10 away here; but if you bear with me, I feel in an
11 underdeveloped area, political and social development
12 is not possible without parallel economic growth.
13 However, it is possible to have economic growth without
14 the development of social services and the human
15 resources of the region. When this happens, social
16 problems can multiply.

17 The north has been experienc-
18 ing development since the ancestors of the native
19 peoples first penetrated the Arctic from the Bering
20 Strait. Since that time, only the nature, level, and
21 timing of development has changed. In fact,
22 development could almost be considered as a permanent
23 feature in the north. In the past 20 years, northern
24 development, we feel, has come to mean two things:

- 25 1. The extension of the Canadian social and
- 26 2. Large-scale expansions of southern industry to
- 27 tap the potential natural resources of the north.

28 If development of the
29 north includes both economic growth and the proper
30 expansion of social and political institutions, then

J.A. Bergasse
In Chief

1 northern development, we feel, means opportunities
2 for northerners.

3 1. The opportunity to choose how one makes a
4 living by a life on the land through hunting and
5 trapping, or from wage employment in industry and
6 government.

7 2. The opportunity to preserve traditional cultural
8 and social values.

9 3. The opportunity to participate in the institution
10 of government under the Canadian Constitution as
11 fully as Canadian citizens in the provinces.

12 I've added a piece there,
13 for the past two years I've had the privilege of
14 serving as a director and member of the Executive
15 Economic Development Association of Canada and this is
16 a national Association with members consisting of
17 people from the private sector, banks, railroads,
18 utilities and governments, who are involved with the
19 economic development of Canada. I was asked to chair
20 the Environmental Sub-Committee and to develop
21 a position paper on land use, environment and economic
22 development. This paper was approved by the national
23 membership last April and is now the accepted position
24 of this Association. I would like to table a copy of
25 that, Mr. Commissioner.

26 Q That goes with the
27 appendices.

28 A Those are the appendices.

29 MR. SCOTT: Mr. Commissioner,
30 Mr. Bergasse is available to be cross-examined. Is it

J.A.Bergasse
In Chief
Cross-Exam by Bayly

appropriate to take a coffee break first, or would you like to carry right on?

THE COMMISSIONER: Oh, you know what our program is for today.

MR. SCOTT: All right.

THE COMMISSIONER: Are we prudent to take our coffee break now?

MR. SCOTT: No.

THE COMMISSIONER: Well, carry on.

MR. SCOTT: Mr. Bayly?

CROSS-EXAMINATION BY MR. BAYLY:

Q Mr. Bergasse, you referred early in your evidence to a review of programs which is not yet complete. Can you tell me when you contemplate completing the review of your programs?

A We had hoped to have it completed concurrently with the review of our structure and organization, but it soon became obvious that we had to complete one before the other so we completed the structure and organization based on the assumption that we were going to utilize our existing programs. We're now starting to work on a review of our programs, and I would imagine that our targetting is sometime prior to April 1st of next year to have that completed.

Q And will this review of programs include reviewing those programs you've outlined this morning, that will be pipeline-related?

J.A. Bergasse
Cross-Exam by Bayly

1 A That's right, we will
2 review all of our programs.

3 Q So it may be that you'd
4 be changing or adding to some of these programs as a
5 result of the review, or seeking to do so.

6 A Well, I think "seeking
7 to do so" is the better way, because I don't have
8 the power to change programs.

9 Q Yes, but you'd be
10 recommending.

11 A I would be, yes at this
12 point in time I would be just be guessing if I said
13 what changes were going to be made or what changes
14 were not going to be made.

15 Q All right. Just in the
16 general course of things, if you recommended that
17 certain of the programs that you've embarked on that
18 are pipeline-related be either changed or added to,
19 when would that change take place, if approved in the
20 budget for the next fiscal year?

21 A It wouldn't materially
22 change, I would imagine, in the next fiscal year
23 because I don't know if you are familiar with the
24 government programs forecasting cycle, but we forecast
25 18 months ahead.

26 Q So if you had it ready
27 by April, you'd be forecasting for two years from now.

28 A I think we'd be fore-
29 casting for the fiscal year 1977-78. I beg your
30 pardon --

J.A. Bergasse
Cross-Exam by Bayly

Q '78-79.

A -- '78-79, yes.

Q Now, in terms of lead

time for some of the projects that you have outlined such as piling mills, concrete weight plants, etc., would these then not be able to either be altered or augmented until that time?

A The ones that were

-- I should go back to what I said earlier on, on this question that when we looked at particular projects we looked at them in the context of being viable without a pipeline. Those type of projects, if they're viable without a pipeline, then we would feed these into the normal forecasting cycle. We might even be able to start those in the next fiscal year if funding could be made available. We could re-allocate funding, and I'm thinking of the prefab housing, for instance.

Q Yes.

A Some of the others, I would imagine you would, depending on the scope of the capital involved, and depending on how the capital can be made available, I would imagine you'd need at least a year's lead time. You'd need a year's lead time anyway probably to get the machinery and equipment.

Q Yes, so if the pipelines that are proposed are on schedule, you might have difficulty meeting the Arctic Gas schedule in particular, with some of your pipeline-related projects.

A On some of the ones that

J.A. Bergasse
Cross-Exam by Bayly

1 tied into the pipeline, it might be, I don't know.
2 I'd have to -- I don't think I could give you a
3 definite answer on that.

4 Q All right. Have you
5 looked at these projects with an eye to the schedule
6 that has been projected by both Arctic Gas and
7 Foothills?

8 A No, we looked at the
9 projects basically on using the concept that they
10 would be viable without a pipeline.

11 Q Now, that is with the
12 exception of concrete saddle weight projects and
13 perhaps some of the piling projects.

14 A That's right, yes.

15 Q And those you've
16 looked at differently?

17 A The concrete -- the
18 pilings, we have not gone that far into it because
19 it involves a fair amount of capital, I believe, a
20 fairly quick return on investment but it's a limited
21 period, and the companies that we have dealt with
22 so far have not really indicated that much interest
23 in putting up the kind of equity participation that
24 we would like to see them put in.

25 Q Now, in your evaluation
26 of programs that you're conducting, is that -- does
27 that involve the canvassing of the local businesses,
28 the communities through their various organizations,
29 whether they are Municipal Councils or native
30 organizations to see whether the programs being

J.A. Bergasse
Cross-Exam by Bayly

received are what people had expected or that they meet the people's needs and expectations? Is it that kind of review, or is it an internal review only?

A Well, it would be both.

I would imagine we would do -- what I would like to see happen is that we would do a review, an in-house review first, and get some idea, get our own thinking straightened out, and then consult with the communities and with our regional and field people to see whether these programs were in effect meeting the requirements of the people, because after all, I am a great believer in consultation, consultation with the people to whom we're going to be delivering these programs. Now, we can do this through our regional field people. We have staff throughout the north, and I would like to feel that the programs that we finally come up with -- you know, we may end up with keeping our existing programs, you know, they may be quite suitable

J. A. Bergasse
Cross-Exam by Bayly

Q We heard some evidence recently from Mr. Snowden and Mr. Currie on economic development projects and one of the things that Mr. Currie said was that a program that he'd been on that worked very well was one that involved an oyster project in the Bras d'Or Lakes and the thing he felt made that project successful was that the idea for the project came initially from the people for whom it was to benefit and that it was for that reason that they entered very enthusiastically into it. His concern was that if you present a program to people, even consulting with them after the fact to tailor it to their needs, it's less likely to be successful than if the idea comes from them in the first place.

What I want to know is whether you would consider doing your consultations with the people who are to be benefitted by the programs in conjunction with your in-house review rather than subsequent to it?

A I think I envisage it really. I couldn't agree with you more. I think for a program to be successful, everybody involved in that program has to be committed to it and that includes the people who must meet the climb in population as well as the people that are administering it. I would certainly expect that if at all possible and I would certainly strive to that end, that we would concurrently be holding consultation while we were doing our in-house work. This is the reason--I should point out that this is one of the reasons that we have gone--as part of our

J. A. Bergasse
Cross-Exam by Bayly

1 review of our structure and organization, we are now
2 putting the expertise and capability down at the field
3 and ground level because they will have responsibility
4 and accountability for delivery of our programs.
5 Headquarters will, in effect, become an overall
6 management and monitoring and planning and a staff
7 function to support the operational end which would be
8 in the field or the regions.

9 Q Now, you've talked on
10 page ten of your presentation of special funding to
11 maintain activity and non-pipeline activities. Now,
12 is this in the overall or do we find that in the
13 Mackenzie Valley most of the emphasis or perhaps all
14 of the emphasis is on pipeline activities whereas
15 non-pipeline activities are centered off the pipeline
16 route area?

17 A You mean would this type
18 of funding have to be spread throughout the Northwest
19 Territories?

20 Q Yes.

21 A There's a certain amount
22 of it being done right now. There's some industries,
23 some projects that I'll be providing a list of that are,
24 at this point in time, because they haven't reached
25 viability, being subsidized. That is being done now.

26 I think really what I was
27 meaning by that, if I could just pick one particular
28 sector, would be the fishing industry. I think the
29 fishing industry possibly could be seriously hurt if
30 there was a pipeline and people were dragged away, you

J. A. Bergasse
Cross-Exam by Bayly

1 know, with those high wage employment and people were
2 dragged away from it. Now, on the other hand, the
3 biologists tell me that it wouldn't hurt the Great
4 Slave Lake to let it sit for three years and not be
5 fished. But you may not have an industry at the end
6 of three years.

7 So, that's the type of area
8 I think we meant, that I meant when I was referring to
9 here.

10 Q Fine. Can you tell me,
11 in the Mackenzie Valley, what proportion of the budget
12 presently either spent or allocated relates to pipeline
13 related activities as opposed to non-pipeline related
14 activities?

15 A At the moment, I would
16 say that the total amount of our budget is going to
17 non-pipeline related activities.

18 Q So, except for the
19 planning, it's--

20 A Except for the planning,
21 we are not utilizing our budget in pipeline related
22 activities.

23 Q In the region that we're
24 interested in in the Mackenzie Valley, what is the
25 average duration of programs that are set up in the
26 communities? Have you looked at projects from that
27 point of view?

28 A You mean how long will
29 we set up an operator project?

30 Q What is the average when

J. A. Bergasse
Cross-Exam by Bayly

1 you do set up a project? How long does it usually
2 last on the average?

3 A Well, again it will vary
4 depending on what the end objective of that particular
5 project is. We operate, for instance, some projects
6 providing services for that community which would not
7 otherwise be there. Now, some of those, it could be
8 sometime before they achieve viability but normally
9 when we start a project, if everything being equal,
10 we look from three to five years before it will achieve
11 viability. If we can't see much beyond the five years,
12 then we ought to look at it a little differently.

13 Q Now, you referred to
14 services in the community. What sort of services are
15 provided in the main?

16 A We operate three retail
17 stores in three communities in the Mackenzie. The
18 reason we operate them is because I think in one case
19 the Bay pulled out, so there was a requirement--people
20 needed a requirement and Council directed us to look
21 at--Territorial Council directed us to look at this.
22 The other two areas, the people themselves indicated
23 a requirement for a retail store but there wasn't
24 sufficient volume of business at that time to set it
25 up as a private operation. It would require support
26 in the way of management support and financial support.
27 I'm pleased to say that I think within the next year
28 all three of those retail stores will in all probability
29 be turned over to the local communities to operate.

30 Q Do you include things like

J. A. Bergasse
Cross-Exam by Bayly

1 the Canvass Project as services?

2 A No, I don't consider that
3 a service. Another one would be a laundry that we
4 inherited in Frobisher Bay that I question will ever
5 achieve viability but it's performing a service.

6 Q So, those ones you don't
7 look at the same way because you want to keep those
8 services alive in the communities. Even if they're not
9 viable after three to five years, you may continue to
10 support them in one way or another?

11 A We may continue to support
12 them because they are providing, as I said, a service.
13 They're also providing a certain element of training
14 and to a large extent, to be perfectly honest, it's
15 really social development using economic development
16 tools.

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J.A. Bergasse
Cross-Exam by Bayly

1 Q You've talked about the
2 possibility of the fishing industry being damaged by
3 people being lured away into higher paying jobs on
4 pipelines, and we've heard evidence from people who
5 were living on the land that they were concerned about
6 that. Are there other projects such as the sewing or
7 the canneries or the canvass project that you feel
8 may suffer as well because people will be lured away?

9 A I'm not sure, I'm not
10 sure how far people, you know, you're going to lure
11 people away, whether people in Rankin Inlet working
12 on the cannery would be prepared to move.

13 Q That's probably a bad
14 example, but let's say they're in the valley itself.

15 A The sewing of the garment
16 plants are mostly ladies that work in these. The
17 lumber operations, it's possible because they're not
18 that, you know, at present one of the higher paid
19 operations.

20 Q We've heard with regard
21 to ladies, that in Alaska a number of ladies are
22 employed as camp attendants and cleaning personnel
23 at very high wages. If that were to happen here would
24 you have the same concern about the sewing projects?

25 A It's possible because,
26 you know, there's a limit to how much you can pay
27 in the way of wages. Most of these are done on piece-
28 work. How much you can afford to pay and still maintain
29 for want of a better term, the viability of the
30 operation. So if you require to keep it going, you

J.A. Bergasse
Cross-Exam by Bayly

1 might have to subsidize it.

2 Q You've talked about
3 subsidized employment as something that your department
4 feels has to be provided as an alternative to welfare
5 and to living off the land. Do you feel that the
6 pipeline wages will affect that subsidized employment
7 after construction has finished by raising the expect-
8 tation of people for very high wages?

9 A I'm not sure that I'm
10 expert enough to answer that, but if I could give you
11 a personal opinion I would suspect it would.

12 Q Will that be something,
13 though, that your department will be assessing?

14 A We would certainly the
15 employment, that's a point that I might suggest you
16 raise with Jack Witty when he's appearing before you
17 because I have tended to stay away from employment
18 because I'm not an expert on it. It's part of the
19 department and it's a new part of the department.
20 There's still areas of it that I quite frankly don't
21 know as much about as I should know, as I would like
22 to know. But Jack is an expert on that and I think
23 if you could direct that question to him because I
24 know he is looking at this whole area of employment
25 and unemployment.

26 MR. BAYLY: Those are all the
27 questions I have. Thank you very much, Mr. Bergasse.

28 MR. SCOTT: Mr. MacLachlan?

29 MR. MACLACHLAN: We have no
30 questions.

J.A. Bergasse

1 MR. SCOTT: Mr. Ziskrout?

2 MR. ZISKROUT: I have no
3 questions.

4 MR. SCOTT: I have no re-
5 examination. I want to thank you, Mr. Bergasse, for
6 attending this morning.

7 A Thank you, sir.

8 THE COMMISSIONER: Mr. Bergasse
9 just before you leave --

10 A Oh, I'm sorry, sir.

11 Q -- well, let me say that

12 I appreciate your taking the trouble to outline this
13 picture of economic development in the north for us,
14 and we are in your debt. Let me also say that I fully
15 appreciate that if this pipeline is built that you and
16 your colleagues will have to contend with the impact
17 that it makes, and at the same time if it isn't built
18 you'll have to contend with the situation resulting
19 from that. What we're trying to do here among other
20 things, is to determine what the impact will be if it
21 is built, and we've looked at the Pointed Mountain
22 project, which is a gas pipeline construction project
23 that actually occurred here in the north, and it may
24 be that the experience there is of some assistance
25 to us in predicting what the impact will be here, and
26 taking -- making recommendations to provide a larger
27 measure of native employment, if that is desirable,
28 and a larger opportunity for northern business on the
29 pipeline. The other project that has always intrigued
30 me as having some bearing on the capacity we may have

1 to predict what will happen on the pipeline is Hire
2 North, and I've just wondered if you could tell me
3 a couple of things about this.

4 I've been to Hire North and
5 I've wandered around the construction sites and so
6 on., and talked to quite a few people out there.
7 You say that presently there are 57 men training
8 and/or employed on heavy equipment operating at the
9 site. Then you say -- this is page 7, you say:

10 "Since the start of the training program in
11 April 1973, approximately 100 people received
12 some degree of training as operators, and at
13 least 60% of these have worked or are presently
14 working in the construction industry."

15 What relationship to the 57 bear to the 100?

16 A The 57 people at the
17 moment, as I understand it, in the appendix I list
18 what -- how this 57 is broken down, and incidentally
19 part of that -- 9 of that 57 would be year-around
20 staff. But some of these people could be people that
21 have had a year's training as part of the 100, and have
22 come back. I'm not sure at this point in time exactly
23 how much of the 100 or how much of the 57 will be part
24 of that -- you know, would be returnees on that 100.

25 Q Well, let me approach
26 this another way. This may be in this material that
27 you said just came in the mail today. But since the
28 start of the training program in April '73, approximately
29 100 people received some degree of training as operators
30 At least 60% of these have worked or are presently

J.A. Bergasse

1 working in the construction industry. Now, do you
2 know or will this material that just arrived today
3 tell us how long these people worked in construction
4 industry and how many out of that 100 are in fact
5 still today working in the construction industry?
6 Is that --

7 A No, it doesn't give you
8 how long. It's a list of names and the present
9 whereabouts and employment status of the people we
10 have trained, but I could find out and have available
11 for you --

12 Q You don't have average
13 length of employment?

14 A Not on this list, no.
15 But I would imagine that we could probably develop
16 some realistic figures on that if it is required.
17 No, this just gives the names and the whereabouts
18 and employment status of the people that have been
19 trained. I'm sure that those figures are available.

20 MR. SCOTT: Would you put
21 that on your list of things to see if you can do,
22 Mr. Bergasse? Thank you.

23 THE COMMISSIONER: Yes, you
24 say and I certainly understand that Hire North has
25 been a remarkable project in many ways, and you
26 say that -- on page 8--

27 "The training part of the project has produced
28 and is continuing to produce trained native
29 people who are successfully finding work in
30 the wage economy."

J.A. Bergasse

1 That really goes back to the question I was just
2 asking. What is the average length of time those
3 100 people have been employed, at least the 60% who
4 have been employed since they received their training
5 as operators, and how many are in fact employed today
6 in construction, utilizing that training? I'm not
7 trying to study this program, and don't feel that
8 I'm in any way --

9 A No, I don't have those
10 figures available right here, sir, but I'd be happy
11 to provide them for you.

12 THE COMMISSIONER: O.K., well
13 thanks very much, sir. We certainly have found your
14 presentation very interesting and very helpful.

15 (WITNESS ASIDE)

16 MR. SCOTT: Now would be an
17 appropriate time for a break, Mr. Commissioner.

18 THE COMMISSIONER: Right.
19 Coffee then.

20 (QUALIFICATIONS & EVIDENCE OF D. QUIRIN MARKED
21 EXHIBIT 868)

22 (ERRATA SHEET, M.V.P.I. SUBMISSION, MARKED
23 EXHIBIT 869)

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25
26
27 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)
28
29
30

D. W. Norton
Cross-Exam by Veale

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

DAVID W. NORTON, resumed:

MR. SCOTT: Mr. David Norton who was on a previous panel called by Commission counsel on wildlife management has returned so that he can be cross-examined by those who wish to do so and I think the best way to begin is to ask Mr. Veale to begin.
CROSS-EXAMINATION BY MR. VEALE:

Q Mr. Norton, I would like to draw your attention to page 20942 of Volume 138 which is your evidence in chief as given to this Inquiry on April the 6th of this year. The particular line I refer to states as follows:

"We can unequivocally show there has been no discernible jump on the curve of increasing resource pressure",
and I think this was in the context of your comments relating to the pipeline influx and what it meant to resource harvest and management in Alaska. Can you comment on that line?

A As it appears in the transcript that is too strong a statement. What I meant to read from in the prepared testimony was a sentence--

THE COMMISSIONER: What page is that at?

MR. VEALE: 20942.

THE COMMISSIONER: I have --

MR. VEALE: Page 1.

D. W. Norton
Cross-Exam by Veale

1 THE COMMISSIONER: Right. I
2 see it, yes.

3 A First paragraph. To
4 date, this has not happened in Alaska. There has been
5 no discernible jump on the curve of increasing resource
6 pressure. Discernible carries with it in my mind the
7 connotation of attributable. Therefore, what I intended
8 to say was you have this constantly rising in Alaska
9 as elsewhere in the North curve of resource pressure,
10 person's hours spent hunting, fishing, in recreational
11 pursuits. In the case of the Alaska Pipeline, there
12 was no one single jump that you could label. Alyeska
13 Pipeline did it. Does that clarify that point?

14 Q Well, do I take it then
15 that there has been an increase in resource pressure
16 in Alaska?

17 A Steadily.

18 Q Could you make any--I'm
19 not sure, Mr. Commissioner, to the extent this may have
20 been dealt with previously but there have been some
21 problems recently, I understand, with is it the
22 northwest Alaska caribou herd or the North Slope herd?

23 A It's referred to as the
24 western Arctic herd.

25 Q What has happened to that
26 herd in the past five years?

27 A Based on censuses conducted
28 around 1970, it was believed that the western Arctic
29 herd numbered on the order of 300,000 animals.
30 Censuses begun last winter and continued into this

D. W. Norton
Cross-Exam by Veale

1 spring have been unable to turn up more than I believe
2 the numbers are in the range of forty to sixty thousand
3 animals.

4 THE COMMISSIONER: We heard
5 that evidence from a group from Alaska about a month
6 ago. Is any reason assigned for this decline?

7 A There are too many reasons
8 assigned and, in my mind, they conflict and I wouldn't
9 pretend to take a stand on any of the reasons advanced.

10 Q I'm just trying to
11 remember. You're a biologist, are you?

12 A Yes.

13 Q Forgive me. No, no, I
14 remembered that you were and then you reappeared today
15 on this whole question of enforcement. In my notes
16 of your previous evidence related to enforcement, and
17 I got them out when I heard you were coming. So, forgive
18 me. Well, do these figures seem credible to you, the decline?

19 A I would have to say they
20 seem credible except that there are people in the
21 communities in the western Arctic range who don't
22 believe that the decline in numbers present represent
23 mortality. They believe that they represent shifts
24 in migratory route, or perhaps joining or in-migration
25 of western Arctic animals to join with the Porcupine
26 herd animals.

27 Q Well, a shift in migratory
28 routes could in some respects be as significant, I
29 suppose, as an absolute decline in numbers. In any
30 event, maybe you'd tell us the reasons assigned for the

D. W. Norton
Cross-Exam by Veale

1 decline and give us your views on them.

2 A One of the reasons
3 advanced has been the increasing efficiency of the
4 snow machine, power tool or power conveyance based
5 hunter of the western Alaskan village communities.
6 Another reason advanced has been depredations by
7 carnivores such as wolves. I'm not sure to what extent
8 disease has been implicated.

9 On the other hand, reasons
10 advanced include in-migration from that herd to the
11 Porcupine herd or changing of migratory patterns that
12 would suggest that the animals are still within their
13 range but just not findable at the moment. There has
14 been some talk that the pipeline and related activities
15 are at the root of this. I'm not qualified to judge
16 or I'm not qualified to draw mechanistic reasons with
17 the pipeline construction as to how that could account
18 for the apparent decline.

19 MR. VEALE: Dr. Norton, is
20 there any research that could have been done at an
21 earlier date which would have assisted in this sort
22 of analysis at this date?

23 A Yes, I think that in the
24 intervening years since last estimates were made, the
25 last censuses were taken, I'm sorry I don't know the
26 dates on that, I think it would have been important
27 to establish a regular census process that would keep
28 a finger on the pulse of that herd.

29 Certainly we would expect that
30 if the pipeline had been many miles to the west tran-

D. W. Norton
Cross-Exam by Veale

1 secting the range of the western Arctic herd as
2 presently know, it would have been feasible and I think
3 rational to expect that there would have been more
4 intensive censusing in the intervening years.

D.W. Norton
Cross-Exam by Veale

1 Same problem occurs with
2 people. We would dearly love to know what exactly
3 has happened in terms of the population structure of
4 people in Alaska, as a result of the pipeline. We
5 didn't succeed in our request to the Federal Government
6 to conduct a mid-decade census in 1975 of people again.
7 That would be extremely useful information. I think
8 the analogy is very good, between people and caribou.

9 Q I'm sorry, I don't know
10 if you said it or not, but did you deal with methods
11 of determining whether there is cross-migration or
12 migration of that herd to the Porcupine herd? Is there
13 a method of determining that?

14 A Well, certainly the
15 standard techniques of ear-tagging or collaring,
16 radio-telemetry could have been used to assess the
17 degree to which these two herds are discreet or to
18 which they interchange regularly.

19 THE COMMISSIONER: Could have,
20 but it's not possible.

21 A No, it seems too late.

22 MR. VEALE: Q Well, Dr. Norton,
23 moving on to your evidence in chief in April --

24 THE COMMISSIONER: Just before
25 we leave this, this herd's calving grounds lie many
26 miles to the west of the Prudhoe Bay establishment
27 and the pipeline route. That's true, isn't it?

28 A Yes, assuming that I'm
29 familiar with their primary areas of calving I would
30 say it's on the order of 150 miles to 300 perhaps.

D.W. Norton
Cross-Exam by Veale

1 Q Yes. Dr. Lent, who I
2 suppose is a colleague of yours, told us that, as I
3 recall. He is a colleague of yours, is he?

4 A That's correct.

5 Q And in fact, as I
6 recollect his evidence, he said that their calving
7 grounds lay within petroleum reserve No. 4, if I'm not
8 mistaken.

9 A I would certainly accept
10 his authority on that.

11 Q Presumably there has
12 been an absolute decline in the numbers of this herd,
13 100 and 220,000 animals can't just disappear into the
14 woods. Maybe they can. Do you have any views on
15 that?

16 A I think that the biologists
17 making the census this year obtained quite good cover-
18 age of the area, and the probability that they've
19 overlooked animals that do in fact exist within the
20 expected perimeter of that identifiable herd, I think,
21 is very small.

22 Q The other thing that
23 you see, one of the theories assigned was that they
24 might have merged, some of them, with the Porcupine
25 River caribou herd, but really the ranges of these
26 two herds more or less join where the Alaska Pipeline
27 has been built, and the idea of it, large numbers of
28 them would have in the face of that activity have
29 crossed over to the east. From what I've learned
30 sitting here for 20 months listening to biologists, it

D.W. Norton
Cross-Exam by Veale

1 seems a little unlikely.

2 A Yes, there is evidence
3 -- I hope I'm not giving the impression that no
4 attention is being devoted to the exchange as it
5 now exists across the pipeline corridor, there is
6 tagging, there is following of radio-equipped animals,
7 as they confront the pipeline and associated haul
8 road and other related developments, and as you
9 surmise, what evidence is in hand as far as I understand
10 it, is that if there was exchange before, there is
11 likely to be less exchange now because of these
12 developments. The caribou so far are showing reluctance
13 in many situations to venture across man-made structures.

THE COMMISSIONER:

14 Yes, that's what Dr.
15 Lent said. Right, well, sorry, carry on.

16 MR. VEALE: Q Dr. Norton,
17 pursuing that, what is the response of the state
18 management body to this decline when they can't
19 identify the source of the decline?

20 A The response, as far as
21 management of the harvest of animals has been to
22 set up a quota system for each of the village corpora-
23 tions to give out permits. They have not stopped all
24 hunting, but they feel that with a certain quota
25 system and a possible overrun on the individual village
26 allotments, they can see the herd through and perhaps
27 watch it rebuild. They have also taken measures with
28 the Department of Agriculture to declare north-
29 western Alaska an emergency area to allow for the
30 speedier handling of a food stamp program to fill

D.W. Norton
Cross-Exam by Veale

1 in behind the villages' needs for protein which is
2 normally met by the western Arctic herd.

3 Q And the quota system
4 had never been implemented before, I take it.

5 A No, it had been an
6 unregulated no-limit no-season take, until this year.

7 THE COMMISSIONER: That herd -
8 this is amazing, really. We've heard evidence about
9 fluctuations in populations of northern species.
10 That's a phenomenon that no doubt occurred before man
11 entered the north. But when this Inquiry's hearings
12 began a year and a half ago, the western Arctic herd
13 was reputed to be the largest herd in North America.
14 Now it has gone from 300,000 to you say 50,000 animals.
15 It is now one-sixth what it was. That has occurred
16 within five years and no one seems to know the reason
17 why. That is the situation we're faced with.

MR. VEALE:

18 Q I think the interesting
19 point was that as I recall, the biologists indicated
20 that if there were a very severe decline, they would
21 be able to attribute cause, and what they were
22 worried about was a slow decline over a longer
23 period of years and what in fact appears to have
24 happened is a rapid decline and biologists are still
25 shaking their heads.

26 Do you have any comment on
27 that, Dr. Norton?

28 A I hoped that the Inquiry
29 will not be taking my figures of estimates; they're
30 as I remember them; nor my figures as to when the

D.W. Norton
Cross-Exam by Veale

1 last census was taken. It is possible that the
2 previous census was inadequate in terms of coverage and
3 led to a wrong estimate, an over-estimate of the
4 population. I don't believe that biologists are
5 willing to concede that without a fight, because I
6 think they feel that their coverage was good at the
7 time of the last census. But I would urge you to
8 entertain that possibility as well.
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D. W. Norton
Cross-Exam by Veale

1 THE COMMISSIONER: The last
2 census was in 1970?

3 A It was, all right.

4 Q The evidence that we
5 have heard is that censusing by that time, was carried
6 out by aerial means and so forth and so on. It was
7 a good deal different from the wild guess work that
8 went on say thirty years ago. Well, we'll have to --
9 we'll have to check back with Alaska I think, and see
10 if we can find out anything more about this.

11 A One of the -- I should
12 point out, one of the intermediate causes for alarm,
13 as I understand it, is, that in the census work con-
14 tinuing into this summer, there is a very low produc-
15 tion rate of calves, reason unknown, but it certainly
16 indicates that -- that the herd in the western Arctic
17 may not be in a position to rebound from whatever the
18 cause of its difficulty is and it adds another note
19 of, go very slow on the take of animals until we
20 figure this thing out. I think over the last few
21 months, the native village corporations and the Alaska
22 Department of Fish and Game have come to much more of
23 an understanding among themselves as to how to proceed.
24 At first, there -- it was a very charged atmosphere,
25 very difficult to work your way through the management
26 process, who was telling the truth or who had his own
27 axe to grind in this matter.

28 Q Dr. Norton, are you
29 aware of what activities in terms of development acti-
30 vities have taken place in the calving grounds if it is

D. W. Norton
Cross-Exam by Veale

1 in, you know, petroleum reserve number 4?

2 A No, I'm not aware of
3 activities there. There may be some seismic work
4 but I'm not certain of that.

5 Q Has that been raised as
6 one of the possible causes of the decline?

7 A I haven't heard it, but
8 that doesn't mean it hasn't been.

9 THE COMMISSIONER: It's
10 fascinating in a way, because, someone like you with
11 a lifetime of knowledge on the subject, you and your
12 colleagues are like us, confronted with the fact that
13 we really don't know very much about these animals.

14 MR. VEALE:

15 Well Dr. Norton, we'll
16 move into an area where you have some more knowledge.

17 A Thank you.

18 Q The -- in your evidence
19 in April, you set out three situations that caused
20 or gave rise to failure of the stipulations, the
21 federal and state stipulations relating to the regu-
22 lation of construction of the Alyeska Pipeline and
23 the first one was that, JFWAT was an advisory -- had
24 an advisory function only, and could you tell us --

25 THE COMMISSIONER: The JFWAT
26 was the joint something, something, something.

27 A Joint fish and wildlife
28 advisory team.

29 THE COMMISSIONER: Right.
30 That's Federal State?

A Correct.

D. W. Norton
Cross-Exam by Veale

MR. VEALE:

1 They had an advisory
2 function only. What would your recommendations be
3 in light of past experience for their function to be
4 more effective?

5 A I'd drop the notion of
6 advisory and drop any idea that any discipline working
7 in the regulatory control of construction be it biolo-
8 gist, be it almost anything short of astrologist, not
9 be a second classed discipline. Second class to eng-
10 ineering.

11 Q How then, would you --
12 would you view the management function. I take it
13 that the engineer on the Alyeska Line in terms of the--
14 Mr. General Rollins and Mr. Champion, they were at
15 the top of the hierarchy and what would the hierarchy
16 or how should it be set up so that the biologist has
17 an equal status with the engineer?

18 A Again drop this millstone
19 that ^{can} be hung around a biologist's neck of advisory
20 role and then perhaps set up your entire regulatory
21 surveillance system, so that at the top there is a
22 judge rather than a strictly disciplined oriented dec-
23 ision maker. You could possibly set it up judicial
24 legislative executive analogue. I haven't worked that
25 out in my mind, but there needs to be an arbiter at
26 the top.

27 Q Okay. Well perhaps
28 it would be better if we went to the bottom and we
29 took an example, where there's an enviornmental problem
30 on the construction over a stream, a classic, low water

D. W. Norton
Cross-Exam by Veale

1 crossing problem. Does, in your view, can a decision
2 be made by a biologist in the field in terms of stopping
3 construction? Is that how it should operate?

4 A I think a biologist can
5 tell in many cases as early, or even earlier than an
6 engineer when somethings going wrong environmentally,
7 that should be stopped until a multi-disciplinary team
8 if you will, can sit down and figure out how to do it
9 right before proceeding another inch, but, so can an
10 engineer stop something if it doesn't look right or
11 a hydrologist.

12 Q But were some of the
13 difficulties that -- well you mentioned specifically
14 the lack of early mobilization of the JFWAT team.
15 What do you mean by that? What do you think should
16 have been done in retrospect to have the advance
17 mobilization?

18 A I would say that we had
19 the luxury because of court actions slowing down the
20 initiation of the construction of the pipeline in
21 Alaska. We had the luxury that was not seen or taken
22 advantage of, that JFWAT or other joint team institu-
23 tions could have been mobilized up to two years before
24 the start of construction. They could have been out
25 there, they could have been drafting stipulations that
26 they could live with, they could have been offering
27 the stipulations for public, for community, for con-
28 servation group review, they could have been more
29 familiar with not just the letter of the stipulations
30 or the regulation, they could have been familiar with

D. W. Norton
Cross-Exam by Veale

1 the spirit of them and they could have been in the
2 posture of self-training, they could have been learning
3 a lot more about engineering, they could have been
4 learning a lot more about high-speed construction.
5 It's easy to look back with 20/20 hindsight and say,
6 that should have been done. It's more important, I
7 suppose, to look forward. We're doing this in the
8 matter of our offshore oil. The state is trying very
9 hard to form with the federal government, a joint
10 surveillance capability long before the actual develop-
11 ment takes place and to use the skeleton of an eventual
12 operating joint surveillance team to look at regulatory
13 options, to look at potential resource conflicts and
14 to involve the public in a discussion of these, to
15 educate one discipline in matters of another discipline
16 such as biology and offshore engineering. So, the
17 early mobilization could have been very important.
18 It's also important -- it would have been nice rather
19 than within a month or so of actual start up of con-
20 struction, to get out there and see umteen new faces,
21 people with whom your unfamiliar and have to make
22 decisions on the spot. It would have been nice to
23 have this a little better choreographed so that you
24 knew who was going to give you a hard time or who was
25 sincere in the -- as your opposite number in industry
26 for example.

D. W. Norton
Cross-Exam by Veale

1 Q Then I take it that this
2 would have to be an all encompassing early mobilization?
3 In other words, your second point was that the
4 stipulation simply did not deal with the haul road
5 construction?

6 A That's correct. There
7 should be a view of the system. There are a lot of
8 things that are associated with the building of a
9 pipeline; lateral access roads to material sites.
10 Those happen to be covered by stipulations in almost
11 every case. But the haul road, essentially from an
12 environmental point of view, the first element of
13 the environmental insult was not essentially covered
14 by pipeline construction stipulations. It was covered
15 by a hodge podge and it's very difficult to find the
16 handle to apply a flexible but uniform set of codes
17 for treatment of the environment on that haul road.

18 We ended up playing catch
19 up from the construction of haul roads all the way
20 through.

21 Q Well, that leads into
22 one of the difficulties that JFWAT encountered, I
23 understand, was that they had to deal effectively
24 with existing agencies. I take it that this creates
25 a problem when you're thrown into the field in a hurry.
26 What could be done in the context of early mobilization
27 to sort out some of the difficulties likely to be
28 encountered with existing agencies?

29 A Well, if the joint team
30 means to anybody else what it means to me, it means that

D. W. Norton
Cross-Exam by Veale

1 the parent agencies who had representatives on the
2 joint team would seek and hire these people, do whatever
3 training is necessary and then have these people
4 seconded to speak for their parent agency within the
5 joint team context, if there were early mobilization,
6 this would be a great deal easier then if new bodies
7 have to be hired at the moment of construction and sent
8 into a joint team not really knowing their parent
9 agency and philosophies very well.

10 Q I also understand that
11 there was or at least it's often been said that some
12 of the problems on the Alyeska line were not engineering
13 problems, but contractor problems. Now, what difficulties
14 did JFWAT have in dealing with what is termed a
15 contractor problem? Perhaps you could just explain
16 that?

17 A Yes, the JFWAT
18 representative in a given spread was supposed to speak
19 only to the responsible pipeline office authority,
20 whether it was a federal or a state official. The
21 federal authorized officers field representative,
22 AOFR for short, or the state's field surveillance
23 office, FSO for short, was the only person to receive
24 written communication and authoritative, even advisory
25 directives from JFWAT. JFWAT was never supposed to
26 speak to Alyeska except by invitation of Alyeska. It
27 was never, never supposed to speak to the execution
28 contractor who was the body ultimately controlling
29 what happened in the field.

30 So, that was a problem in

D. W. Norton
Cross-Exam by Veale

1 relation to a matter which I understand has been
2 discussed here, that of the small diameter fuel gas
3 line. I discovered trying to do some hasty research
4 on the subject that JFWAT, for example, never did get
5 to sit down and go over the problems of building
6 this with the execution contractor. That was done
7 by Alyeska. JFWAT didn't interact with the Alyeska
8 process and JFWAT was surprised to learn, and this is
9 a matter of two days ago, that Alyeska was on their
10 side in relation to this whole small diameter line
11 in a number of points of principle and actual detailed
12 design. They had no way of knowing that because the
13 hard knocks negotiations were going on behind doors
14 closed to JFWAT in which Alyeska Pipeline Service
15 Company engineers would cheerfully have wrung the
16 necks of the execution contractors who were being
17 obstructionist in this case.

18 So, that's the kind of
19 problem that the Administration of Regulations, for
20 whatever reason, just was too baroque.

21 Q Okay. Just to tie
22 together some of this evidence, I take it that with
23 respect to the haul road and with respect to existing
24 agencies, you also ran into the difficulty of what
25 pre-existing statutes were applicable, which ones
26 overrode the stipulations and which ones the stipu-
27 lations overrode. Was that a problem?

28 A Yes, it was a problem
29 in application. In the stipulations and I'm not sure
30 just where, but the language is there, that regardless

D. W. Norton
Cross-Exam by Veale

1 of the right-of-way lease stipulations, if there is
2 a federal or a state statute which is stronger, more
3 restrictive than are the lease stipulations, then they
4 would override. They would preclude the lease
5 stipulations.

6 The problem came in getting
7 the Federal Alaska Pipeline Office or sometimes the
8 State Pipeline Co-ordinators Office to acknowledge that
9 possibly the least stipulations were not the final
10 word on how things should be undertaken. They were
11 very reluctant to recognize, for example, Alaska
12 Statute 16, which deals with fisheries habitats and
13 free movement in unpolluted waters by fish. The
14 Federal Government has had a knock-down, drag-out
15 battle with the State of Alaska and I believe other
16 states in the union as to their authority, that is
17 the state's thorough authority, to regulate matters
18 pertaining to fish in state waters.

19 And simply General Rollins
20 did not want to acknowledge the fact that the state
21 had the regulatory authority. The Federal Government
22 did not. He would insist that the lease stipulation
23 was good enough if there were a discrepancy.

24 Q I take it it cuts both
25 ways; that some legislation would be too weak and
26 stipulations--you would want to apply them and in
27 other cases, the legislation would be stronger, so you
28 would prefer to have that legislation as opposed to
29 the stipulation. Now, is that something that can be
30 resolved in the early mobilization in having your

D. W. Norton
Cross-Exam by Veale

1 consultation with other agencies prior to actual
2 construction taking place?

3 A To a large degree, yes.
4 I think that's the ideal place to work these out.
5 You can have trial games if you want, invent
6 situations that are likely to occur to test the
7 strength or the utility of this or that regulatory
8 control mechanism. I should point out, this is
9 really behaving in the fairest manner towards
10 industry. I think industry deserves to know ahead
11 of time who's going to be controlling them or working
12 with them towards what ends; what agencies are
13 represented; how does the process work.

14 If I were industry, and I'm
15 not, I would certainly want to know about it before-
16 hand.
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D.W. Norton
Cross-Exam by Veale

1 Q At this Inquiry there
2 has been a great deal of discussion about a single
3 agency concept, and from your experience with the
4 team concept, do you have any recommendation to be
5 made in that regard?

6 A I think there's a danger
7 in single monolithic agency control. Unless it's
8 recognized and explicitly worked out that within that
9 single agency control there is built-in diversity such
10 as the nature of joint authority in which disciplines
11 are free, even encouraged to disagree over matters
12 to try them out, in which for example if you have a
13 monolithic environmental control, you would again
14 at best have some local technocracy and some federal
15 technocracy, and they're free to disagree, they're
16 free to look at the different perspectives of provincial,
17 territorial, municipal, village, whatever on one side,
18 and federal on the other side. Further, that for
19 example the local or territorial expert or scientist
20 should be free to go to the boss of the federal
21 counterpart in the same discipline and say, "Look,
22 I don't agree with your man and I want to talk to
23 you about it."

24 I think in the earlier
25 testimony I pointed out ^{/how} sort of paradoxically this
26 works very effectively for a state guy to go to the
27 federal office because they really can't close the
28 door on him, and vice versa. You get a better audience
29 if you're not talking to your boss but to somebody
30 who is diagonally lateral in the system.

D.W. Norton
Cross-Exam by Veale

1 So back to the main point.
2 I think that there does have to be some mechanism to
3 make sure that it isn't -- that a monolith isn't
4 created that's not open to debate and even public
5 scrutiny.

6 Q Getting back to the
7 concept of early mobilization, were there areas in
8 Alaska where additional legislation was required to
9 deal with problems that eventually did occur? I think
10 you mentioned the whole problem of feeding bears in
11 your original evidence, and the lack of the company
12 or the lack of effectiveness in the company's
13 sanction.

14 A Yes. My previous
15 testimony in April, there still was no legislation
16 making it an offence in law to feed either deliberately
17 or by carelessness wild animals. Since then that has
18 been corrected, and it needed correcting for a long
19 time. We in JFWAT saw the need for implementing new
20 legislation. There was some inertia, some difficulty,
21 some question as to whether it had to be done legisla-
22 tively or whether it could be done by executive
23 regulation, and it took time to work this out. If
24 for example, the JFWAT and other regulatory aspects on
25 our pipeline had been mobilized, they might have had
26 this sorted out by the time of high speed and high
27 labor intensive construction. But it took a year and
28 a half.

29 Q Do you have any knowledge
30 as to whether or not the new legislation has been any

D.W. Norton
Cross-Exam by Veale

1 more effective than the old idea of firing a man and
2 having him leave and being re-hired in another camp?

3 A I believe that it has.
4 I know that people have actually been behind bars
5 and even the strongest labor unions couldn't get him
6 out until either bail was paid or a fine was levied
7 or whatever.

8 THE COMMISSIONER: Or until
9 the due process of law had run its course.

10 MR. VEALE: Q Tell me, dealing
11 in this area of having the certain legislation
12 passed prior to or in the early mobilization stages,
13 and talking about effective sanctions against someone
14 who breaches that legislation, is there any general
15 application that could be made? IN other words, feeding
16 bears is one aspect, but what happens in a case of
17 where an individual, say, is abusing a low-water
18 crossing and the problem that would face the man in
19 the field is that a stop order may be too heavy a
20 punishment to mete out at that time. Is there any
21 use for, you know, the criminal sanction in those areas?

22 A I don't know really how
23 to draw the distinction between criminal and civil
24 or sort of administrative penalty. I think there could
25 be room within stipulations and within legislation that
26 could be reviewed extensively in ^{an} early mobilization
27 effort to adopt a much more finely graded series of
28 actions that could be taken by regulators to correct
29 a situation, such as for example there really is
30 available to pipeline surveillance an almost infinite

D.W. Norton
Cross-Exam by Veale

1 series of actions between reaching over and turning
2 off the ignition on a caterpillar and tossing the keys
3 in the stream essentially to stopping one individual
4 piece of equipment from doing one activity to saying,
5 "All right, no work is going to be done on this pipeline
6 from its terminus to its beginning on this date and
7 forever more until we get some quality control."
8 That's the drastic end of the spectrum, and there are
9 lots of things in between, you know, very finely tuned
10 semi-punitive solutions that can get very fast results
11 and very appropriate results from industry, engineering,
12 the whole effort.

13 Q Well, were these in-
14 between sanctions available on the Alyeska Pipeline?
15 In other words, there has been a criticism of the
16 failure to use the stop order, you know, enough. Were
17 the other intermediate measures used as well?

18 A In some cases. My belief
19 was that they were not applied early enough, nor
20 quickly enough to indicate to Alyeska that, that is the
21 permittee, that the environmental arm of the government
22 really meant business.

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D.W. Norton
C ross-Exam by Veale

1 MR. VEALE: Mr. Commissioner,
2 do you wish me to continue now, or do you wish to
3 break for lunch?

4 THE COMMISSIONER: All right,
5 let's break. Before we do, Dr. Norton, you said -- and
6 this was one of the most striking things you said when
7 you were here in the spring -- that the Alaska Pipeline
8 office had two contradictory roles to play, one was
9 protection of the environment, and guaranteeing the
10 integrity of the pipeline, and the other was making
11 sure that the pipeline was completed on schedule.

12 You said that there were
13 two halves to their mission, so to speak, one expediting
14 and the other environmental. After lunch if you have
15 any further comments on that you might let us have them.
16 That is if you've reflected on it in the six months
17 that have passed since you were here, and if there's
18 been any more experience in the pipeline that offers
19 any light on the subject.

20 There's a second thing that
21 I would like to ask you to comment about, Dr. Norton.
22 That is -- and I'd like both Arctic Gas and Foothills
23 to reflect upon this and in their final submissions
24 November 15th to say something about it, if they think
25 it is pertinent, maybe it isn't -- but the Arctic
26 Gas proposal is an international pipeline project and
27 we have two governments involved and two nations that
28 are consumers of gas, and one of those nations, the
29 United States, we are told has a more immediate and
30 greater shortage of gas than Canada has, and the whole

D.W. Norton
Cross-Exam by Veale

1 question of enforcement of environmental stipulations
2 which this Inquiry has to consider is one that may be
3 affected by the international nature of this project,
4 that is if indeed the U.S. necessity for gas is greater
5 than our own, and the urgency of their demand is
6 greater, are we likely to be confronted during the
7 course of construction with calls from the United States
8 to ignore environmental standards, wherever that might
9 mean that construction would have to be postponed and
10 the delivery of gas to the lower 48 postponed.

11 I'm not for a moment suggesting
12 that that is something that is likely to occur, but
13 I want you to consider it and to let me know whether
14 indeed it has a bearing on the work of the Inquiry.
15 There is a difference there between the Foothills
16 project, which is a Canadian project, and I'm not
17 saying that in a way that means anything except that
18 I'm just describing it. That is it would be fully under
19 the control of the Government of Canada, were it to
20 go ahead, and there would be no reason for the United
21 States Government or United States consumers of gas
22 to be interested in the environmental standards imposed
23 within Canada or in the machinery for enforcement of
24 those standards, and I -- at any rate, maybe you'd
25 think about that, Dr. Norton, as a representative here
26 of the United States of America, and perhaps both
27 companies would reflect on that and in the final submis-
28 sions if you think there's anything to be said on that
29 point, I'd like to hear from you. If it has no bearing
30 on our work, well, that's something that you might wish

D.W. Norton
Cross-Exam by Veale

1 to say, too.

2 So we'll adjourn till two
3 o'clock?

4 MR. SCOTT: Yes sir.

5 (PROCEEDINGS ADJOURNED TO 2 P.M.)
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D. W. Norton
Cross-Exam by Veale

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. VEALE: Well, Mr.

Commissioner, you had posed two problems to Dr. Norton. I wonder if he wants to deal with them now or at the end of his evidence.

THE COMMISSIONER: Or at all.

A Well, I found the second question particularly intriguing. I don't know whether it's worth exploring widely or not, but let me offer one viewpoint on the possible difference of application and standards between two Federal Governments. You referred to me as a representative of the United States. Being from Alaska, I feel sometimes like a representative from a disunited state, particularly as we are in continual confrontation with the present federal administration in my present line of work over the speed with which our government wants to issue leases, hold bonus bid lease sales for offshore oil tracks.

So, in a sense, we feel from the Alaskan perspective much more kinship, shall we say circumpolarly north of sixty with Canadian counterparts in dealings with our respective Ottawas and Washingtons perhaps than is generally recognized. In response to both questions, the first question having been how do you get away from putting one person under two hats at the same time, which two hats want to pull in opposite directions.

I can only say that I think you have to play this game of developing scenarios. For example, I don't know what's going to happen in

ANALYST: J. B. C.

D. W. Norton
Cross-Exam by Veale

1 relation to offshore development but I'm pretty certain
2 that it's going to be very tightly controlled by what
3 happens on the second of November in our country with
4 the elections. If Mr. Carter is in office, then that's
5 a very different ball game than President Ford returning
6 to the presidency. We know President Ford's feelings.
7 We have some idea of Mr. Carter's feelings and I think
8 what we should do, whether we're talking about
9 Canadian-U. S. co-operation, whether we're talking
10 about putting regulatory control in the hands of
11 somebody who may have two different jobs to do, what
12 you really need to do is imagine ahead of time that
13 there are always ongoing ^{/a} series of elections, faces change.

14 The game that maybe ought
15 to be played as institutional frameworks are
16 contemplated, is to say, okay, now we're going to
17 play the game with a gungho developer under this hat
18 and will there be checks and balances on his getting
19 out of hand built in institutionally? Then replay the
20 game. Now, we're going to have an arch conservationist,
21 let's say, under this hat. Are there checks and
22 balances against his going off the deep end, putting
23 on the brakes on for energy development or whatever
24 to the detriment of getting a job done and I think--
25 my own suggestion is play these scenario games and see
26 if by putting in people of different philosophical
27 stripes in your imagination, you can't refine the
28 institutional mechanisms and make sure that you've
29 got more or less or a steady response guaranteed
30 thereby. I don't know if that makes any sense.

D. W. Norton
Cross-Exam by Veale

1 THE COMMISSIONER: It sounds
2 easy to implement but at least we can--

3 MR. VFALE: Well, I was
4 wondering if I could pursue that a little. In your
5 evidence in April, you indicated that the state had
6 a strong interest in early completion of the con-
7 struction. Now, why is that?

8 A Well, the state was faced
9 by a revenue shortage and is still faced by a revenue
10 shortage, which shortage could be greatly alleviated
11 by revenue from royalty monies, but those monies would
12 not be coming into the State Treasury until oil flowed.

13 Now, the state got itself
14 into that box of dependency on Prudhoe Bay royalty
15 monies under a previous administration in the states
16 and this goes back to the point that you've got to have
17 a kind of a random number generator in your imagination
18 as to who's going to get elected when. The present
19 administration in the state is a very go slow, not
20 obstructionist, but its strong suit is the protection
21 of renewable resources, not of non-renewable resources.

22 So, the state found itself
23 in this box partly because of the philosophy of
24 preceding administration which was all pro oil
25 development and partly because of the delay, the long
26 court caused delay between the leasing of the Prudhoe
27 Bay area which generated a great deal of revenue and
28 the completion of the pipeline which was to generate
29 another pulse of revenue, and there was not enough
30 ongoing in addition to these activities to see the state

D. W. Norton
Cross-Exam by Veale

1 through.

2 So, at the time that I was
3 involved, it was very important to move on to completion
4 in actual oil flow.
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D.W. Norton
Cross-Exam by Veale

1 Q Has the state or
2 any people in JFWAT considered mechanisms to avoid
3 this particular type of problem of the state rushing
4 to completion almost as fast as the pipeline company
5 itself?

6 A The current administration
7 has, it's a problem well beyond the confines of
8 JFWAT , obviously. It belongs in the state's Department
9 of Revenue. What is envisioned now, and it will be up
10 for general referendum, is the so-called permanent
11 fund which will represent as I understand it, revenue
12 monies from the flow of oil to the pipeline which will
13 be set aside, it will be a capital fund or like an
14 endowment fund to the state which will generate their
15 own revenues and the permanent fund is to take oil
16 --money generated from non-renewable resource exploi-
17 tation and apply it primarily to the protection of
18 renewable resources as further bases for state income.
19 This is seen as a cushion against such a dilemma as
20 was posed by the construction of the pipeline where
21 we needed the revenue, but we still wanted to protect
22 the environment. Which one wins? In other words,
23 the state would like to be able to have the cushion
24 to sit back and consider alternatives without being
25 faced by bankruptcy.

26 Q Well, in your evidence
27 you've made references to the high speed construction
28 and reaction time of JFWAT to it. I understand you
29 had 30 biologists. Was that an adequate staffing
30 level, considering the speed of construction that took

D.W. Norton
Cross-Exam by Veale

1 place?

2 A Most people will probably
3 say in relation to their own staff, "No, that wasn't
4 adequate."

5 This number of biologists was
6 just about adequate if people worked extra hard. It
7 was certainly more adequate, more nearly adequate than
8 anything seen in regular line agencies within the
9 State of Alaska. We were the envy of the Department of
10 Fish & Game. We had more biologists north of the
11 Alaska Range involved in one special pursuit than have
12 ever worked for the Department of Fish & Game in
13 Alaska in that pursuit statewide up until that point.

14 So it's a relative thing. If
15 construction had been any faster, I think the size of
16 JFWAT would have had to go up geometrically simply
17 because there were too many things going on at different
18 places all at once. There might be within any one of
19 the six construction sections, there might be eight or
20 12 construction spreads, each with two construction
21 heads, whether they were working on a work pad or
22 stringing pipe or welding, just an awful lot going on
23 at high speed construction.

24 Q What would have been the
25 case if instead of the projected three years there
26 had been a five-year construction schedule, what
27 difference would that have made to your agency in
28 terms of numbers of biologists required to staff it?

29 A I haven't thought about
30 this carefully, but I suspect that we could have got

D.W. Norton
Cross-Exam by Veale

1 by for two-thirds of the number of staff, and a careful
2 analysis of activities within JFWAT might have found
3 that with a smaller number of people there was less
4 time involved in generating work among the biologists
5 for the biologists back and forth, if there had been
6 fewer people, a leaner staff.

7 Q With respect to the
8 first question that the Commissioner posed relating
9 to the conflicting objectives of the Alaska Pipeline
10 office, is part of the solution at least to that
11 problem one of ensuring that the engineering and biology
12 functions are separated and distinct without one of
13 them having access to control of the entire project?
14 Is that the key to the problem?

15 A I'm not sure which direction
16 you're asking the question from. In some ways, engineer-
17 ing and biology were too separated. In other ways,
18 they were not separated and recognized as equally
19 important disciplines to a sufficient degree.

20 Q That's the one I'm
21 referring to.

22 A In the latter sense I
23 think what I was referring to earlier was that maybe
24 the suggestion ought to be entertained that one office
25 be involved in facilitating permits, or one element of
26 the surveillance effort be involved in facilitating
27 getting the permits out. To my way of thinking, that
28 is not necessarily the prerogative of engineers. It
29 might be up to lawyers to do that, who might sit in
30 judgment on both engineers and biologists. Am I getting

D.W. Norton
Cross-Exam by Veale

1 to what you were referring?

2 A Well, that's certainly
3 an acceptable proposition in this audience. No, you're
4 addressing the problem. Would you continue on this?
5 You mentioned the facilitating function. Now, are there
6 any other functions that you envisage than that?

Q No, just other -- other functions.

Q Well do you envisage these as separate functions, where with separate offices, are they all part of this joint team effort that you speak of?

Q Dr. Norton, I wonder if at this time, we could introduce a report entitled, Environmental Compliance and the Public Interest During

D. W. Norton
Cross-Exam by Veale

1 the Consturction of the Trans Alaska Pipeline. I take
2 it this is a report completed by G. M. Zemanski of
3 the Fairbank's Environmental Centre and you have
4 brought the report with you to the Inquiry. I would
5 ask Mr. Commissioner, that this be made an Exhibit at
6 this time, in the event that Mr. Zemanski does not
7 bring copies. His evidence is going to be substantially
8 the contents of this report, but in a different format.
9 I'll provide you with a copy in a minute.

10 The report is dated September
11 1976 and it also has in it, at page 181, notes taken
12 at the 27th Alaska Science Conference and one of these
13 notes relates to a paper presented by Mr. A. Carson
14 entitled, Environmental Problems Caused by Construction
15 of a Fuel Gas Line From Prudhoe Bay to Pump Station
16 Number 4. Dr. Norton, I understand that you were one
17 of the organizers of that conference. Is that particular
18 paper in a complete form going to be published as a
19 part of the proceedings of that conference?

20 A That's our intent. We
21 have not yet located the funding to support publishing
22 papers in full, although we have some verbal en-
23 couragement. I expect to be receiving the final draft
24 copy for editorial inclusion in that volume within a
25 matter of weeks.

26 Q I see. Is there some
27 way of assuring that that particular document would
28 be made an Exhibit to the Inquiry. Mr. Commissioner,
29 there is an unedited version available at this time,
30 but the author is naturally reluctant to have that

D. W. Norton
Cross-Exam by Veale

1 made public without having an opportunity to go
2 through the final draft, but, I take it, we'll be able
3 to get something before this Inquiry ends on that
4 subject.

5 A Yes, I would hope so.
6 I have a draft copy myself and there are problems of
7 unclarity in the language and I'd prefer not to
8 submit it at this point and also I would be going
9 counter to the wishes of Mr. Carson, who did much of
10 the writing of it and I expect to be in touch with him
11 encouraging him to finish promptly.

12 Q Well, Dr. Norton, the
13 subject of contingency plans has been dealt with just
14 last week, as a matter of fact, at this Inquiry and
15 I was wondering if you have any -- any comments on
16 the usefulness of contingency plans and any examples
17 of how contingency planning was followed through in
18 the construction of the Alyeska Pipeline?

19 A My direct involvement
20 with contingency planning on the Alyeska Pipeline
21 involved contingency plans for oil spills that might
22 happen during the construction phase. There's a
23 separate contingency plan for operations and maintenance
24 phase which I believe should now be complete reviewed
25 and supposedly adhered to upon completion of the line.
26 There was, not one, but a number of editions of the
27 construction phase, oil spill contingency plan and it
28 looks very good on paper. In practice, we had problems
29 with it, because when oil spill did occur, the con-
30 tingency plan or the edition then in use was not

D. W. Norton
Cross-Exam by Veale

1 workable, for example, if so many bales of solvent
2 material were to be stockpiled in such and such a
3 construction section, maybe they were there, frequently
4 they were not, but also maybe they'd been buried in
5 several tons of other more immediately useful material
6 like caterpillar tracks or what not and it took hours
7 to get down to the solvent material, meanwhile oil
8 was continuing to leak or spill or whatever. So having
9 it on paper is one thing, putting it into practice
10 as a viable plan is different.

D. W. Norton
Cross-Exam by Veale

1 Q Do you have any views
2 on the problems associated with cold weather when manpower
3 can't be used on outside work? Were there any
4 contingency plans with the construction of the Alyeska
5 line relating to that manpower that was in place but
6 not working at the particular time?

7 A There may have been say
8 labour use contingency plans. I'm not aware of any.
9 The problems of labour productivity, I imagine, have
10 been rather well reviewed here. I understood that on
11 a given day when it would go below minus thirty-five
12 or forty and it wasn't men that were unable to work,
13 it was machinery that would just break down faster
14 than it could be repaired, you had a terrible problem
15 of what to do with unoccupied men and women and brawls
16 and rapes and everything else in isolated camps would
17 break out.

18 Q There were no plans
19 that you were aware of?

20 A Not that I know of. I
21 just don't know of any system whereby a person who
22 was trained to do one thing primarily had a second
23 capability that he could offer indoors to keep
24 productive and keep from wrecking the place.

25 Q In the construction of
26 the Alyeska Pipeline, was there any use of bonding
27 or insurance policies relating to specific damages
28 that occurred?

29 A Yes, I do not know the
30 specifics but there is a bonding arrangement in regard

D. W. Norton
Cross-Exam by Veale

1 to the marine leg of oil transportation or transportation
2 of Alaskan oil associated with this pipeline. I don't
3 know the amount to which Alyeska in some arrangement
4 with shipping companies/^{are}required to bond for possible
5 spillage.

6 By the language of the right-
7 of-way lease agreement, Alyeska is liable to an
8 unspecified amount, whatever is assessed that is for
9 rehabilitation of damaged habitat, wildlife and
10 fisheries habitat. JFWAT now is in the final stages
11 of determining what rehabilitation Alyeska will be
12 responsible for at some point in the future.

13 Q So, is there a specific
14 mechanism so that when damage is determined, there is
15 immediate payment, or how does the mechanism of the
16 bonding work?

17 A I don't believe that
18 it's spelled out that carefully. I'd have to go back
19 and review the language of it but as far as I remember,
20 it just states that Alyeska is responsible and I
21 understand that to mean financially responsible.

22 Q Just one tag end,
23 relating to the problem of high speed construction and
24 the urgency that one country may have as opposed to
25 another in getting the gas out, have there been any
26 recent changes in the attitude of the Department of
27 the Interior relating to the construction speed of the
28 Alyeska Pipeline?

29 A Strictly to the construction
30 speed?

D. W. Norton
Cross-Exam by Veale

1 Q Well, quality control
2 and things that may have been sacrificed in order to
3 get the oil out quickly.

4 A Yes, the Under Secretary
5 of Interior, Mr. Frizzell, in Alaska following an
6 inspection of the pipeline in September, I believe,
7 stated that his own department had failed by not
8 exercising stop work orders early in the game when it
9 was first apparent that quality control, quality
10 assurance was a non-functional element of Alyeska's
11 planned approach.

12 In other words, he was saying my
13 troops really should have bore down much earlier and
14 much more strictly to whip this quality control into
15 line.

16 Q This is a public statement,
17 I take it. It's not an in-house.

18 A Yes, as a matter of fact,
19 it was printed in the Fairbanks newspaper on September
20 15th.

21 Q Perhaps we could have
22 that as an exhibit, just for the record, sir. I
23 wonder, Dr. Norton, if we could deal with an example
24 of problems that arise even though engineering and
25 design may be good but problems of execution. I wish
26 to direct you to low water crossings which seem to be
27 something that JFWAT spent a great deal of its time
28 monitoring and perhaps you could just give us your
29 views on the problems encountered.

30 A I think the main problem

D. W. Norton
Cross-Exam by Veale

1 was with low water crossings. First they were designed
2 to do one thing. Then they were put into service by
3 the contractor to do several other things and they
4 failed, in that sense, being overstressed.

5 As I understand the original
6 intent of low water crossings, they were designed for
7 an inexpensive way to get across a stream in almost
8 a once only configuration at the time the work front,
9 dealing with the pipeline, needed to cross the stream
10 on a work pad, without going to the expense of bridges.

11 Q Or pipes I suppose too?

12 A Or culverts.

13 Q Culverts, yes.

14 A They required generally
15 very little fill or select material. They were
16 preferable on paper to doing nothing but just waddling
17 through heavy equipment because there would be some
18 guarantee of bank stability and erosion control by the
19 select material. But when it became easy for people
20 to drive yellow pick-ups or bigger pieces of equipment
21 through with break-neck velocity and see how high they
22 could make the spray go and rather than go back through
23 an access road and all the way around, people would
24 naturally want to take the shortest distance between
25 two points to get the job done.

26 Low water crossings, I believe
27 without exception, failed. Vehicles were stuck.
28
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D.W. Norton
Cross-Exam by Veale

1 Q Tell me, in your
2 experience with JFWAT, does social impact monitoring
3 have a role in that team concept that you were speak-
4 ing of?

5 A In this region in the
6 north it seems to me that it's much harder to draw a
7 distinction between environment or the ecosystem and
8 man by slicing it in two with the dividing line
9 socio-economic on one side, and environmental or
10 ecologic on the other. I don't believe we've success-
11 fully conveyed that message to Washington because they
12 continue to view our total system problem through
13 two very different looking glasses: One socio-economic
14 and the other ecological.

15 But in this part of the world
16 where so many people have direct use of renewable
17 resources, without or even with cash economy inter-
18 vention. I don't think that's a realistic view and
19 to answer the question now, it seems to me that to
20 the extent you can get the sociological discipline and
21 the biological discipline, and make the most of the
22 fact that this is a different part of the world and
23 a different kind of latitude, yes, I think sociological
24 lifestyle problems should be very much a part of a
25 monitoring system, or a joint team approach.

26 Q Could you tell us the
27 kind of environmen tal education that Alyeska gave to
28 its construction workers?

29 A According to the lease
30 stipulations, they were to assure that every worker

D.W. Norton
Cross-Exam by Veale

1 who went out on the line had passed through a course--
2 I won't say "passed a course", but passed through the
3 procedure of having the environmental gospel laid
4 upon him. This was done at recruitment centres in
5 certainly Anchorage and Fairbanks, possibly some
6 other recruitment points, and it was like batch pro-
7 cessing for enlistment in the Marines.

8 In my experience I didn't see
9 how it could be terribly effective. People slept
10 through it quite routinely, and it was part of a
11 bigger indoctrination program involving safety and
12 so-forth, generally restricted no more than 12 hours
13 of time.

14 JFWAT did try, and I'm sorry
15 I don't know the overall scope of effort or success,
16 but I know that JFWAT tried experimentally just putting
17 on informal evening slide show rap sessions with con-
18 struction personnel out in the field, in the camps
19 after they'd been at work for some time, and in my
20 understanding these were very well-attended and very
21 well-received, and should probably have been instituted
22 much earlier.

23 Q And is there any answer
24 to the turnover problem and the constant need for re-
25 education?

26 A Maybe there is, other
27 than continual re-education, I'm not sure.

28 Q Dr. Norton, I'd like to
29 discuss some of the environmental problems that were
30 involved in the construction of the fuel gas line from

D.W. Norton
Cross-Exam by Veale

1 pump station 1 and 4.

2 THE COMMISSIONER: I'd like to
3 make an announcement. Father Fumoleau phoned me
4 today and was good enough to say that he would show
5 his film for me tomorrow evening, since I hadn't seen
6 it. It is entitled:

7 "I was Born Here."

8 So he's going to come down to this room at the hotel
9 at nine o'clock tomorrow evening and show the film
10 and I am taking the liberty of inviting all of you,
11 members of the public who are here as well.

12 Miss Crosbie, would you phone
13 him back and make sure he has a projector, and if he
14 hasn't, see if you can find one. Tell him nine o'clock
15 here tomorrow.

16 Right, go ahead.

17 MR. VEALE: Q Well, Dr. Norton,
18 I take it that you weren't personally involved with
19 the construction and monitoring of this fuel gas
20 line, is that correct?

21 A No, I was not, except
22 in the very earliest thinking stages.

23 Q When you were involved
24 with JFWAT.

25 A Correct.

26 Q Well, have you made
27 yourself cognizant of all -- most of the issues that
28 took place during that construction? Have you had an
29 opportunity to speak with people about it?

30 A Yes, I have read and

D.W. Norton
CrossExam by Veale

1 talked with people who have been intimately involved.
2 The fuel gas line is a very interesting phase of the
3 overall Trans-Alaska Pipeline experience. Most
4 immediately it resulted in a number of very good people,
5 to my way of thinking, highly qualified people resigning
6 from JFWAT and from the engineering staff of Alyeska
7 in disgust, and I tried with maybe some success to
8 inform myself after the fact how it all came about.

9 Q Well, perhaps I could
10 just let you ramble on that subject, rather than giving
11 you a specific question.

12 THE COMMISSIONER: Well, it's
13 better that you ramble, Dr. Norton, than Mr. Veale
14 ramble.

15 A The small diameter gas
16 line which was to supply pump stations 1 through 4
17 with the energy to pump was designed mainly after the
18 larger diameter pipe, after the work pad, after the
19 haul road were in either building stages or final
20 design stages, and it seemed to me odd that this aspect
21 which had been known about among Alyeska circles, this
22 aspect of the whole system had been finally designed
23 so late in the game. But apparently this was not
24 malicious, nor was Alyeska trying to hide any of its
25 ancillary project-related elements from JFWAT or from
26 anybody else, but it was due to the simple fact the
27 big push for a long time had been to gain notices to
28 proceed from the Federal and State Governments, or
29 federal and state pipeline offices so that they could
30 proceed with the big job of the large diameter line.

D.W. Norton
C ross-Exam by Veale

1 So their manpower was thoroughly
2 committed, thoroughly tied down to getting that job
3 done and then as the end approached on that, individuals
4 were shifted over to the problem of this fuel gas line,
5 the small diameter line. As it ended up, it looks very
6 much like a Rube Goldberg bandaid type of solution.
7 The alignment problems you can imagine. Where are you
8 going to put a small diameter fuel line, given that
9 you have a work pad and large diameter pipeline
10 here, and over here you have a haul road. It became
11 the unwanted aspect of the whole pipeline system for
12 both the pipeliners and the Alaska Department of
13 Highways, the eventual inheritors of the haul road.
14 Neither of them wanted it close to their piece of
15 construction. So it went back and forth and Alyeska
16 engineers had to first look for a suitable route
17 alignment, given the problems generated either by the
18 road or by the haul road -- the work pad.

Immediately wherever it went, the small diameter line, the kinds of soil, was going to problem of thermal erosion and was entirely to be buried, in soils that had already retent to bear a large hot oil problem which is really a three erosion.

There was another problem of how much ditch could be left open, given the problems of animal movements and their possible falling into this narrow but deep ditch and there were other problems. I think perhaps Mr. Zemanski, if he arrives here, wants to talk about an idea of his and some other people that the vegetative mat in the winter was supposed to have been peeled back much like a sheet

1 of paper and left in that configuration and then slapped
2 back over the ditch, following backfill. These were
3 all ideas in the hopper and problems at issue. I don't
4 know if that gives enough background to the--

5 Q Well, I take it the
6 thermal erosion problem is the reason that select
7 backfill had to be put in rather than just laying the
8 mat back on. Is that what took place?

9 A Yes, as with everything
10 else, there's kind of an evolution of ideas and as
11 this fuel line was designed by committee eventually,
12 it was almost foredoomed not to work out very well.
13 But one step in the sequence was people with real
14 Arctic soils experience were called into tell the
15 execution contractor how to protect the whole small
16 diameter line from thermal erosion and erosion itself,
17 siltation of streams.

18 The first solution proposed
19 was essentially a three piece or a channel, let's say,
20 of styrofoam or polyurethane foam insulation to be
21 put in over the backfill immediately as the welded
22 pipe was layed into the trench and the backfilling
23 had taken place. The execution contractor apparently
24 threw up his hands and said, there's no way that we
25 can put in a kind of a three-sided roof of insulation
26 and they negotiated back and forth between the Arctic
27 soils engineers employed be Alyeska and the execution
28 contractor, all of this unknown to JFWAT incidentally,
29 and eventually a thicker layer of just single flat
30 roof-type of insulation was agreed upon as a pretty much

D. W. Norton
Cross-Exam by Veale

1 acceptable compromise.

2 So, there was that kind of
3 evolution and resistance on two sides of an issue
4 between the designers and the execution contractors.
5 The agreed to form of backfill and insulation proved
6 not to be as satisfactory as hoped and there was the
7 prospect of a lot of thermal degradation of the backfill.
8 Unfortunately the backfill soils ran up to I believe
9 sixty to seventy percent water by volume.

10 Well, this means that you can't
11 fill up the trench with frozen water and with incomplete,
12 that is not natural insulation, and expect the trench
13 to do anything but slump in and become a pond. So,
14 yes, they did have to go after select backfill; that
15 is dry materials.

16 Q In spite of using select
17 back fill, did they encounter any problems with the
18 length of open ditch and that ditch filling up prior
19 to the pipe laying and backfilling?

20 A Yes, as this forthcoming
21 paper says, at one point there were up to thirty miles
22 of open ditch between where the pipe was already
23 welded and in many cases, layed in the bottom of the
24 ditch and where they were backfilling. What happened
25 was in that part of the world the blowing snow, whether
26 during a snow storm or just blowing horizontally filled
27 up the ditch and packed hard. It's very difficult to
28 put in backfill when you can walk across the ditch on
29 six or eight feet of hard packed snow.

30 So, it had to be reexcavated

D. W. Norton
Cross-Exam by Veale

1 from snow before backfilling could take place.

2 Q Was that the problem in
3 the spring then when the early melt came that-- Was it
4 the fact that the ditch had filled up with snow that
5 had caused all the water to exist at that time, or was
6 it problems with the snow work pad?

7 A Well, it was a combination
8 undoubtedly and I don't have any figures on this but
9 it must have been a combination of still open ditch,
10 the remnants of the snow work pad and unconsolidated
11 spoil that was still left lying either on the snow pad
12 or alongside the ditch or wherever.

13 Q The evidence was given
14 last week by I guess it was Mr. Fowler who indicated
15 that when they had built pipelines or gathering lines
16 in Prudhoe Bay that they did not use a snow work pad
17 but they simply bladed the snow, and I think I'm correct
18 in that. I recall his statement to that effect that
19 they weren't working from work pads. Is it possible
20 to work under all circumstances ^{/by simply blading} or is that something
21 that is only suitable for a certain terrain?

22 A In the Prudhoe Bay
23 situation there is very little flow. That's very flat
24 land. I don't know whether his remarks pertained to
25 blading a heap of snow and working on the heap of
26 snow or whether they referred to blading down to tundra
27 surface, but I think it's safe to say that you can get
28 away with more in quite level land. The real problems,
29 of course, occurred on the small diameter line in the
30 more southerly portion of its route where they entered

D. W. Norton
Cross-Exam by Veale

1 federal land and it's coincidental but state land stops
2 about where the terrain assumes some topography. So,
3 very briefly, where you've got slope, that's where you
4 have the worst problems with erosion, both thermal
5 and hydrologic.

6 Q Well, with respect to the
7 snow pad that was actually built for the fuel gas lines,
8 was that a design problem or the execution contractors
9 problem?

D. W. Norton
Cross-Exam by Veale

1 A I have been told that it
2 was mostly execution problem in that the execution
3 contractor had no experience with snowpad construction
4 and did not believe that it would work, went on record
5 that it would not work and then made this a self-ful-
6 filling prophecy. Also an execution problem in that
7 some people feel that construction was begun too early
8 in the middle of November 1975, rather than waiting
9 until say after the Christmas slowdown, when there
10 would more likely be enough snow and perhaps the
11 precipitation rates were higher.

12 Q What about the environ-
13 mental problems associated with -- with blasting when
14 that's required?

15 A They primarily deal with
16 spoil material. When you shoot frozen ground it
17 behaves like rock and it goes all over the place. In
18 fact, problems encountered were that, of course, you
19 go from a nice straight wall ditch, which was the
20 original design with the rock saws to a jagged hole
21 in the ground and pieces of junk 100 feet away. It
22 resulted in damage to the small diameter line sitting
23 there either welded or unwelded and one solution, one
24 bandaid solution for that was to stack up styrofoam
25 workpad insulation sheets between the blast and the
26 small diameter gas pipeline to protect it from rock
27 fragments and ice fragments being blown out of the
28 hole. That wasn't very effective and of course it
29 fragmented these pieces of styrofoam. If you've ever
30 had experience with styrofoam cups or house insulation,

D. W. Norton
Cross-Exam by Veale

1 in Arctic winter when the wind blows, you know, you
2 can imagine how many fragments from that experience
3 are scattered all across the north slope. You can't
4 see them all to pick them up although they did make
5 an effort to pick up the sheets or the fragments
6 thereof.

7 Q Well in Mr. Zemanski's
8 report, one of the exhibits is notes on Mr. Carson's
9 speech and it indicates in paragraph C-1, that a
10 ditch 7 to 8 feet resulted instead of the 18 inch
11 that was planned and approved. Is that what you're
12 referring to when you ended up with a jagged ditch
13 as opposed to a straight up and down?

14 A Correct.

15 Q In this particular fuel
16 gas line, did they run into problems in interpreting
17 stream data in the winter time?

18 A They did. They should
19 not have the design crew that was shifted from almost
20 notice to proceed work, to the alignment and ditch
21 configuration design, the work plan for the fuel gas
22 line foresaw the problem of trying to determine stream
23 thalwegs and contours and burial depths in mid-winter.
24 So prior to freeze up in 1975, that crew was detailed
25 to go out and stake every single drainage to be en-
26 countered by the alignment. The stakes were put out,
27 they were numbered as far as I understand. There were
28 given very clear direction and then the execution
29 contractor ignored the stakes.

30 Q Do you have any knowledge

D.W. Norton
Cross-Exam by Weale

1 as to why they were ignored or was there a problem in
2 winter finding the stakes or something of that nature?

3 A I can't imagine that
4 there would be a problem finding stakes other than,
5 you know, the normal accretion of a few that might
6 have been knocked over.

7 Q With reference to the
8 notes Mr. Zemanski made relating to the speech delivered
9 by Mr. Carson, the Alaska Science Conference, there
10 were certain recommendations, do you have those in
11 front of you Dr. Norton?

12 A Are we looking at page
13 2 of the Alaska Science Conference notes?

14 Q Yes, that's the page.
15 Those recommendations, (A) no blasting (B) maximum
16 of two miles of open ditch, et cetera, are those
17 recommendations that you yourself would stand by and
18 JFWAT would presumably have endorsed?

19 A Yes I think generally,
20 some of the -- some of the things I think, as a matter
21 of fact Alyeska was insisting on less than 1 mile of
22 open ditch at any one time in any one place. (G)
23 under that section, better resodding efforts through
24 careful handling of tundra. I think there's some --
25 some debate on this issue. Engineers have told me
26 that this was pure pie in the sky, to think that you
27 could take tundra and reflect it and put it back again
28 in one mat at forty below, because it behaved like --
29 what's a good analogy, -- it just fractured into a
30 powder, despite the best efforts to handle it, but,

D. W. Norton
Cross-Exam by Veale

that's a small point, that the overall recommendations
I think, for example, immediate restoration in and
reseeding yes, extremely important.

MR. VEALE: Okay, those are
my questions Mr. Commissioner.

MR. SCOTT: Mr. Commissioner,
I wonder if we could take a short break here.

THE COMMISSIONER: Right.

MR. SCOTT: Thank you sir.

(WITNESS ASIDE)

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

M.H. Rogol
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. SCOTT: Dr. Norton is not completed, of course. He has to be here overnight in any event, and he and the other counsel have agreed that he should be permitted to step down for the moment, so that we can call our next witness, Martin H. Rogol, who is before you on the panel. Mr. Rogol had the wit to come to Yellowknife without any baggage, shaving sticks or any of those things, and consequently has the best possible excuse to be allowed to go home at the earliest moment, and it's on that basis that we've called him.

MARTIN H. ROGOL, sworn:

DIRECT EXAMINATION BY MR. SCOTT:

Q Mr. Rogol, I understand that in 1969 you graduated from George Washington Law School in United States.

A That is correct.

Q And that for two years thereafter you were on the staff of Vista, which I understand is an anti-poverty program in which you represented consumer groups, community groups in economic development programs.

A That is also correct.

Q Yes, and that for two years after that you joined Ralph Nader's organization and participated as special counsel or as special general counsel in an experimental program in Connecticut called, "The Connecticut Citizens Action Group"

M.H. Rogol
In Chief

1 A That is correct.

2 Q And that for a year after
3 that two-year period you were on the staff of the
4 University of Maryland teaching in the Department of
5 Business and Management.

6 A College of Business and
7 Management.

8 Q I see. That when you left
9 there you became press secretary to a successful
10 candidate for the U.S. Congress.

11 A Yes.

12 Q And having achieved that
13 you returned in late 1974 to Mr. Nader's organization
14 where you are presently the director -- the director of
15 what?

16 A Interest
The Public/Research Group.

17 Q I see, Public Interest
18 Research Group. First of all, can you explain what
19 that group does?

20 A It has basically two
21 components to its activities.

22 (1) It is a clearing house and outreach operation for
23 local public interest groups around the country on
24 various issues, plus we have certain of our own issues
25 with which we deal, one of which is energy, another
26 of which are financial institutions and we help in
27 trying to develop various funding mechanisms for local
28 organizations as well.

29 Q Well now, Mr. Commissioner,
30 Mr. Rogol has prepared a submission to which are

M.H. Rogol
In Chief

1 attached a number of documentary appendices, and I
2 would ask that they be an exhibit. The purpose of his
3 submission today is to give us the benefit of his
4 experience with respect to the ability of consumers
5 groups, public interest groups to participate in
6 regulatory activities, and this for example, connects
7 in my respectful view with the kind of evidence we
8 had yesterday from Dr. Thompson as to the role of
9 public interest groups and institutions such as
10 ombudsmen in the implementation aspect of any project
11 such as a gas pipeline.

12 Mr. Rogol, would you begin,
13 please?

14 A Thank you. The testimony
15 starts off with a quote from an article in the Yale
16 Law Journal which I think basically sets the stage
17 in terms of what at least in the States we consider
18 important in consumer representation.

19 Q Could you bring the
20 microphone a little closer to you, please?

21 A Sure. Is that better?

22 Q Yes.

23 A

24 "There are a number of potential social
25 advantages to public participation in admini-
26 strative hearings. Public intervention can
27 provide agencies with responsible decisions;
28 it can serve as a safety valve allowing inter-
29 ested parties and groups to express their
30 views before policies are announced and imple-

M.H. Rogol
In Chief

1 mented; it can ease the enforcement of
2 administrative programs relying upon public
3 co-operation; and it can satisfy judicial
4 demands that agencies observe the highest
5 procedural standards. If agency hearings
6 were to become readily available to public
7 participation, confidence in the performance
8 of government institutions and in the fair-
9 ness of administrative hearings might be
10 measureably enhanced."

11 In the United States there
12 is no longer a question of whether consumer, environ-
13 mental and other citizen groups should intervene in
14 regulatory proceedings, the question now is how can
15 such intervention be encouraged and funded? However,
16 it's still instructive to review the reasons given for
17 encouraging citizen intervention.

18 The aim of a democratic
19 system is not merely to see that the laws are faithfully
20 executed, but also to seek to ensure that in their
21 faithful execution, justice is done. To this end,
22 conflicting interests should be fairly represented in
23 impartial forums and that claims of adversaries are
24 fairly heard, weighed and judged.

25 The adversary system applies to
26 regulatory agency proceedings -- at least in theory.
27 But in practice the equal representation which one
28 supposes the public interest shares with special inter-
29 ests does not exist in the usual administrative forum.
30 In practice, representation of industry interests in

M.H. Rogol
In Chief

1 agency proceedings is more vigorous and more persuasive
2 -- unfairly persuasive, some would say -- than the
3 broader public interest.

4 Many reasons have been
5 advanced for the real and apparent imbalances between
6 special and public interest representation before
7 government agencies. Some have attributed the industry
8 orientation of regulators to a pervasive corruption,
9 and recent scandals in the United States have lent
10 credibility to these charges. Others making milder
11 charges, speak of corruption, born of a revolving door
12 of employment and of a continuity of social and official
13 intercourse between industry and government.

14 However, one need not look for
15 scandal or even for subtler corruption to explain why
16 the interests of the public at large and individual
17 citizens are too often under-represented and ill-served
18 in federal administrative proceedings. One need only
19 look at the simple fact that it is difficult over time
20 for even the most conscientious public servant to weigh
21 objectively the interests of both the public and those
22 industries which he or she is charged to understand in
23 the course of his or her duties.

24 For in time even the most
25 conscientious officials are likely to view their duty
26 to the public interest as embracing the legitimate
27 aspirations and interests of those parties with whom
28 the agency must deal on a daily basis.

29 The agencies themselves were
30 once thought to embody and to provide advocacy for the

M.H. Rogol
In Chief

1 broadest interest of the general public. The standard
2 was set by Franklin D. Roosevelt, who comprehended
3 the necessity of consumer-minded regulators. In his
4 first presidential campaign in 1932, F.D.R. described
5 his philosophy of utility regulation.

6 "The Public Service Commission is not a mere
7 judicial body to act solely as an umpire between
8 complaining consumer or the complaining investor
9 on the one hand, and the great public utility
10 system on the other hand. (When I became Govern-
11 nor of New York) I declared that as the agent
12 of the Legislature, the Public Service Commission
13 had and has a definitely delegated authority and
14 duty to act as the agent of the public themselves;
15 that it is not a mere arbitrator as between the
16 people and the public utilities, but was created
17 for the purpose of seeing that the public utilities
18 do two things:

19 (1) Give adequate service

20 (2) Charge reasonable rates, that in performing
21 this function it must act as agent of the public
22 upon its own initiative as well as upon petition,
23 to investigate the acts of public utilities re-
24 lative to service and rates, and to enforce
25 adequate service and reasonable rates.

26 The regulating commission, my friends, must be
27 a tribune of the people, putting its engineering,
28 its accounting and its legal resources into
29 the breach for the purpose of getting the facts
30 and doing justice to both the consumers and

M.H. Rogol
In Chief

1 investors in public utilities. This
2 means when that duty is properly exercised,
3 positive and active protection of the peop-
4 le against private greed."
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M. H. Rogol
In Chief

The standard is still true and should be periodically reviewed by regulators. However, they will never attain that standard without citizen participation. As stated by a leading conservative in the U. S. Senate, Senator James Buckley, in testimony before a Senate subcommittee considering ways to improve citizen participation,

"The issue is redressing the enormous disadvantage of citizens when faced by often prohibitive cost of litigation with agencies of the Federal Government. Too often citizens have no choice but to capitulate to bureaucratic demands and all too often, legitimate grievances are not redressed".

Rather than provide extensive review of the benefits of increased public participation in regulatory and court proceedings, a brief summary: Citizen participation will provide the following:

Well-balanced administrative decisions - currently all different viewpoints are usually not represented at agency proceedings, resulting in decisions that ultimately favor the side able to afford the representation necessary to adequately present their views.

Strong advocacy of currently unrepresented interests - even though the mandate of most agencies is, in general, to protect the "public interest", they are still placed in the position of having to develop rules which incorporate all views the agency had an opportunity to consider. Since the agency

M. H. Rogol
in Chief

1 is in the position of having to be fair to all parties,
2 it cannot be expected to vigorously advocate one side
3 or the other (F.D.R. notwithstanding) Because it
4 cannot vigorously advocate one position, those who
5 cannot afford their own advocates will not be well
6 represented at the proceedings.

7 Greater public acceptance of
8 and confidence in administrative decisions - the public,
9 and particularly public interest groups are much more
10 likely to accept an agency's decision and not to "clog
11 the courts" by challenging it in an action for judicial
12 review when they had a full opportunity to present their
13 views during the agency proceedings.

14 Agency personnel to be more
15 vigorous in their work - the mere presence of interveners
16 in a proceeding may tend to make the agency personnel
17 do their homework, resulting in more careful scrutiny
18 of the issues and more sound agency action.

19 Greater articulation of
20 administrative standards and reasoning - when proceedings
21 are vigorously contested, the agency must of necessity
22 clearly articulate the standards used and the reasoning
23 behind the decisions. As Chief Judge Bazelon of the
24 United States Circuit Court of Appeals for the District
25 of Columbia suggested in Environmental Defense Fund
26 versus Rucklehaus, and that was when Mr. Rucklehaus was
27 the head of the Environmental Protection Agency,

28 "Courts should require administrative officers to
29 articulate the standards and principles that
30 govern their discretionary decisions. When

M. H. Rogol
In Chief

administrators provide a framework for principled decision-making, the result will be to diminish the importance of judicial review by enhancing the integrity of the administrative process".

This is just a summary of the most important contributions made by increased public participation. Benefits to the entire agency decision-making process also come from suits for judicial review of agency action. The most significant benefits of such litigation are:

- a) Agency accountability - without the possibility of judicial review of agency actions, the agencies would be unaccountable. Suits for judicial review force officials to realize that no action taken can be arbitrary or capricious or be the "final word" on the subject.
- b) Citizen redress of grievances caused by agencies - when citizens feel their government has acted illegally to their detriment, the suit for judicial review is their major means of challenging such illegalities and forcing redress of their grievances.
- c) Greater articulation of administrative standards and reasoning - as mentioned earlier with regard to the benefits of participation in agency proceedings, when agency officials know their decisions might be challenged, they are more apt to clearly explain their standards and reasoning.
- d) Check on government illegalities - agencies must not only just be made aware that they will have to

M. H. Rogol
In Chief

1 account for their actions, but when they do act
2 illegally, outside the bounds of their legal
3 mandate, the suit for judicial review benefits the
4 entire governmental process by providing a remedy
5 for such illegalities. As in La Raza Unida versus
6 Volpe, that was when Mr. Volpe was head of the
7 Department of Transportation, where highway con-
8 struction was enjoined because various regulations
9 for housing displacement and relocation and
10 environmental protection were not complied with;
11 and Sierra Club versus Lynn where public interest
12 plaintiffs were instrumental in bringing about
13 compliance with various environmental laws, these
14 illegalities can only be corrected through the
15 Courts, since the legislature has already acted
16 and the executive is the one breaking the law.
17 We've also gone through numerous examples of
18 successes due to public participation agency
19 proceedings; the Federal Energy Administration,
20 the Nuclear Regulatory Commission and the Civil
21 Aeronautics Board. Some of that is somewhat
22 technical, so I'll pass through.

23 Traditionally, additional
24 consumer or environmental representation has met
25 with antagonism from business and industry. However,
26 there are far-sighted business leaders that have
27 endorsed various aspects of citizen and consumer
28 advocacy, namely the Agency for Consumer Advocacy
29 recently before the U. S. Congress.

30 Now, that agency would be a

M. H. Nogal
In Chiet

1 government body structured as an advocate for consumer
2 interests. It would have no regulatory authority at
3 all. It would just be an internal--

4 As to consumer confidence in
5 the marketplace, Mr. Leo Schoenhofen, Chairman and
6 the Chief Executive of Marcor, which is the parent
7 company of Montgomery Ward, said in 1972,

8 "There's a growing body of opinion that sees a
9 close correlation between the belief of numerous
10 consumers that they don't yet have adequate
11 protection in some important circumstances and
12 today's less than optimum public confidence in
13 business, the declining interest of some talented
14 young people in business careers and other ills
15 that currently plague the marketplace. Because
16 we believe a fair and effective Consumer Protection
17 Agency law would be a positive step toward
18 correcting some of these problems and because we
19 believe it would advance the vital cause of
20 providing all Americans with fair and effective
21 consumer protection, we are pleased to announce
22 our support".

23 Mr. Avram J. Goldberg, President
24 of Stop and Shop Companies, which operates about 300
25 stores in the northwest, believes that consumer advocacy
26 will have a beneficial effect on government as it has
27 had on business.

28 "Stop and Shop has always firmly believed in the
29 philosophy of consumer input in our daily business
30 lives. We believe it only right that the federal

M. H. Rogol
In Chief

1 government receive that same input".

2 Mr. William White, Director
3 of Government Relations for Connecticut General Life
4 Insurance Company recognized in his 1974 statement that
5 consumer advocacy does not just create another layer
6 of bureaucracy as opponents have tried to publicize.

7 "We are not in favor of a duplication of
8 regulatory agencies, but do feel that the proposed
9 mechanism, being the consumer agency, is
10 important to ensure that the consumer's voice
11 and interest are properly considered".

12 In endorsing the bill and
13 by way of response to the trade associations, those
14 in opposition, Mr. John Wolbarst, Manager of Consumer
15 Services of Polaroid Corporation said in July, '74,

16 "We believe that it is unrealistic to take the
17 position that it is up to the consumers them-
18 selves to present their point of view before
19 the various agencies. It seems reasonable and
20 desirable to create a government agency charged
21 with the duty of advocating consumer interest
22 before other government agencies. Fears have
23 been expressed that such an agency would be
24 harmful to legitimate business interests. We
25 do not share that view".

26 There are various ways that
27 have been offered to correct the imbalance and provide
28 for citizen representation. The testimony goes to
29 five.
30

M. H. Rogol
In Chief

1 The first one however, would
2 be with reducing procedural impediments to effective
3 participation. Immediate costs and ones to be examined
4 are the costs for filing and copy distribution. Another
5 recommendation from various quarters has been that
6 the costs of recording formal agency proceedings should
7 be borne by the agency, not the parties, and that
8 transcripts should be furnished without charge to a
9 "indigent participant."

10 A further recommendation has
11 been that agencies should assist the public by making
12 as much information available as possible, through
13 such efforts as early public -- as early notice pro-
14 cedures and by requiring that public participants
15 receive copies of all documents simultaneously with
16 their receipt by the agency staff and other parties.

17 Important adjuncts to the flow
18 of material is the Freedom of Information Act and
19 improved discovery methods.

20 Finding experts presents
21 additional problems. Most conclude that internal
22 agency expertise should not be used by intervenors.
23 However, there always is the option of providing outside
24 technical help at agency expense.

25 The first of the five issue
26 areas, covered, is the doctrine of standing. The
27 testimony goes through fairly technical, legal style
28 memorandum on the various problems faced in the United
29 States with standing. I think they're best left
30 written and not read, but I would encourage this

M. H. Rogol
In Chief

1 proceeding to consider allowing or recommending its
2 final report, that anybody that demonstrates any
3 interest whatsoever, in participation in regulatory
4 proceedings, be allowed to participate.

5 THE COMMISSIONER: In the
6 Supreme Court of Canada Mr. Rogol, recently decided
7 that any citizen has the right to challenge the
8 constitutionality of provincial or federal legislation.
9 That had not been the case previously in Canada. I
10 take it that principle is well accepted in the United
11 States, that every citizen has standing to challenge
12 the constitutionality of ^{/an} enactment by the Congress or
13 by the State.

14 A Constitutionality is only
15 one part of the situation I was dealing with.

16 Q Yes, I understand that.

17 A I've enclosed, as an
18 Appendix, a legislation that has been introduced in
19 Congress to provide broad standing to citizen -- for
20 citizen intervention from agency proceedings to tax
21 payers suits, relating to illegal government acts,
22 which provides opposition on the issue standing.

23 The second area where we've
24 seen intervention on behalf of the citizens has been
25 by Attorney's General and the State level. An inc-
26 reasing accepted answer on the state level to the
27 inability of citizen interests acting independently
28 to present effectively the consumer perspective before
29 the regulatory agency. It is the assumption by the
30 government of the burden of intervention on behalf of

M. H. Rogol
In Chief

1 its citizens. Usually acting through Consumer Pro-
2 tection Divisions, Attorney's General have represented
3 the public before state agencies in an increasing
4 number of states. They had their legal expertise
5 investigative capabilities and to some extent the
6 financial resources as compared with private litigants.
7 Their willingness to enter proceedings can serve to
8 deter unjustified requests by the corporation. How-
9 ever, in most states Attorneys General have not adopted
the practice of intervening on behalf of consumers.
10 The majority view their function as representatives of
11 state agencies, a function very possibly inconsistent
12 with representation of the public interest. Further
13 limitations on the Attorney's General's capacity for
14 effective representation relates to his or her broad
15 discretion in allocating the offices limited funds
16 and resources where the Attorney General is elected
political considerations often predominate and con-
17 sumer representation is only one of numerous tasks,
thereby diffusing accountability for decision.

18 The third area consumer
19 peoples or public counsel. The initial question is
20 whether the office should be considered inside or
21 outside the agency. The obvious reason for an outside
22 office of public counsel is to preserve both the
23 appearance and reality of counsel's independence and
24 integrity. None presently exist on the federal level
25 although numerous states have enacted outside public
26 counsel statutes. A few federal agencies have estab-
27 lished their own inhouse office of public counsel.

M. H. Rogol
In Chief

The most effective is the first one, the Interstate Commerce Commission. Essentially, what they've done is create an office of public counsel which has two responsibilities, one of which is, as it's now constituted, intervention on behalf of the public in I.C.C. proceedings. The other part of their responsibility, is the distribution of Attorneys fees to those groups wanting to litigate on behalf of interest that would otherwise not have the financial resources to enter the proceeding. There are other examples in the testimony, the Civil Aeronautics Board which has an office -- at least it's an office in Consumer Affairs name, many people have yet to be convinced it's an office of Consumer Affairs in reality. The Postal Rate Commission and there are various and sundry other small efforts by certain agencies.

On the State level, we've seen some progress. The states have experimented with offices of public or consumer counsel to a much greater extent than the Federal Government. Much of their experience is in the area of utility rate making before state public service commissions.

The first example is California. The Division of Consumer Services of the Department of Consumer Affairs, within the State of California's Agriculture and Services Agency, is an office of public counsel, which does intervene on behalf of consumer interests in both agency and court proceedings. Its chief is appointed directly by the

M. H. Rogol
In Chief

Governor, and the Division has a staff of approximately 30 persons. It may call upon experts from both within and outside at market rates.

New Jersey. Probably the most extensive state public counsel's office in the nation is New Jersey's independent State Department of Public Advocate. This department, also created in 1974, contains the Office of the Public Defender which covers criminal cases and inmate advocacy program for prisoner representation, a division of mental health, an office of Public Interest Advocacy, a citizen complaints and disputes settlements office, as well as a separate Division of Rate Counsel. The Department of Public Advocate intervenes in a wide variety of agency and court cases. By late March '75, the Division of Rate Counsel's case load had reached 75 matters, including public interventions in telephone, gas, electric and water utility rate proceedings. As in New York's intervenor program, the New Jersey Division of Rate Counsel represents the general public interest and does not appear on behalf of private parties or organizations.

The fourth major area, the Attorneys Fees. We've recently had a -- the Supreme Court turned down a general equitable jurisdiction of the courts to award Attorneys fees without specific statutory authority and I've brought with me, and it was not included in the original submission, a draft of the statute which has yet to pass Congress, S.2715 which would provide for Attorneys Fees for interested

M. H. Rogol
In Chief

1 public interest groups and others who have intervened
2 in regulatory agency proceedings along with standards
3 and various measures to keep the organizations account-
4 able.

5 The section on Attorneys Fees
6 is also somewhat of a legal memorandum and probably
7 best read rather -- written rather than read. The
8 last section goes to something called Residential
9 Utility Consumer Action Groups and at the last appendix
10 there's an article that I co-authored, describing how
11 to create that act and the various sections that go
12 along with it. The article appeared in the February
13 '76 issue of the Harvard Journal and Legislation and
14 by way of background, I think I ought to set the stage
15 for the reason we selected on this approach.

16 Agency proceedings and the
17 whole governmental process is essentially political.
18 We can have all the technical expertise we want, but
19 it also has a political side to it, and we looked around
20 and tried to see those so called citizen operations,
21 citizen groups that had an ongoing organization that
22 had a consistent flow of funds that had a fair amount
23 of money and were relatively accountable to their
24 members, as well as having independence, those are
25 the standards we use and at least in the United States
26 the group that came closest to that, were the Labour
27 Unions, and what they did was, they took an existing
28 payment mechanism, salaries, and piggybacked that
29 existing payment mechanism to provide for very
30 efficient means of raising money through their dues

M. H. Rogol
In Chief

1 for their organization. So we tried to use a similar
2 kind of mechanism with utility proceedings in the
3 United States and what we did was, draft a statute
4 which would essentially piggyback existing utility
5 bills so that someone who pays their monthly electric
6 bill for example, could write out their cheque in
7 an amount about what their presently paying for a
8 total of \$2.00 over a period of a year. They become
9 a member of a non-profit public interest type corpora-
10 tion. They would have a vote in the selection of
11 Board of Directors that they could run themselves and
12 the money would be used by the Board to hire pro-
13 fessional staff of lawyers, accountants, economists,
14 organizers, whatever they felt necessary to properly
15 represent their interest.

M.H. Rogol
In Chief

And the reason why we selected something like this is (a) we thought it would raise a lot more money than government appropriations could provide, that it would provide an institutional ongoing approach, it would be directly accountable to their members, it would be voluntary, putting some burden on citizens to become involved themselves, not expecting government to consistently do for them, and it provides for a little political bounds.

Unfortunately, or fortunately, a democracy is so open that you find that those who have economic power invariably can use that economic power to gain a lot of political power. So you have those who are organized are the ones who have economic power, and they after a while attain an unfortunate amount of political power, leaving those who were not organized and do not have ~~the~~ economic power any political power at all. So you have certain selected economic interests being predominant, and what the thrust of the various proposals, especially those that include citizen participation, are to provide a way ^{/for citizens} to have organization and funding, to present some countervailing political power to those strong economic interests, and that's why we recommended to most groups at the state level the creation of these residential utility consumer action groups.

I was also asked to talk about slightly the impact that citizen intervention will have on Courts and administrative bodies, and I'd like to just go through that section.

M.H. Rogol
In Chief

Opponents to increased citizen participation always suggest that it will result in a flood of new litigation that will overburden the Courts, and also the agencies. This is a wholly unwarranted and mischievous speculation, however, Many states have either liberalized standing or consumer counsel or both, and their Courts have not been overburdened. The Statutes already allowing the reimbursement of attorney fees, and I included in the appendix approximately 50 of those, before federal agencies has not overburdened the Federal Courts. The words of Chief Justice Warren Burger of the United States Supreme Court, when he was on the U.S. Court of Appeals, are instructive. In the Office of Communication of the United Church of Christ versus the Federal Communication Commission, he said concerning the administrative proceedings:

"We are aware that there may be efforts to exploit the enlargement of intervention, including spurious petitions from private interests not concerned with the quality of broadcast programming, since such private interests may sometimes cloak themselves with a semblance of public interest advocates. But this problem as we have noted can be dealt with by the Commission under its inherent powers and by rule-making."

In the prepared statement of Honourable Charles Richey, U.S. District Judge, District of Columbia, submitted during the hearings on

M.H. Rogol
In Chief

Senate Bill 2715, went even further than Justice Burger.

"Again as a long-time observer of the administrative process and a former faculty member of the National College of the State Judiciary for the Federal Law Judges' Seminars on three different occasions, and as a federal judge reviewing the increasing number of cases that come before us at the trial and appellate levels, I would suggest that your Bill S-2715 will decrease the amount of litigation in the Federal Courts."

There is no evidence that increased citizen participation has overburdened the Courts. In fact, the converse may well be true; and even if there is additional litigation, it has been to the benefit of the system. As the statement of the Honourable Harold Leventhal, U.S. Circuit Judge, U.S. Court of Appeals, District of Columbia before the same Kennedy Sub-Committee demonstrated:

"Administrative law and regulation have been profoundly influenced by the participation, in agencies and in Court, of the public interest representatives. They have identified issues and caused agencies and Courts to look squarely at problems that would otherwise have been swept aside and passed unnoticed. They have made complaints, adduced and marshalled evidence, offered different insights and viewpoints, and presented scientific,

M.H. Rogol
In Chief
Cross-Exam by Bayly

1 historical and legal research. They have,
2 in my view, been of significant service
3 to the entire decisional process."

4 MR. SCOTT: Thank you, Mr.

5 Rogol. Mr. Bayly?

6
7 CROSS-EXAMINATION BY MR. BAYLY:

8 Q Mr. Rogol, can you tell
9 me what a group has to do under the Interstate
10 Commerce Commission procedures, or under any of the
11 more advanced procedures in the United States to be
12 recognized as a public interest group for the purpose
13 of funding?

14 A As an appendix, I forgot
15 to mention when we were in direct and I'm glad you
16 raised that question because you gave me an opportunity
17 to remember, there is also -- it's Appendix "B" --
18 which has in it the Magnusson-Moss warranty Federal
19 Trade Commission Improvements Act, which is a Statute
20 that has been passed which allows the Federal Trade
21 Commission to get attorney's fees. I also have attached
22 as the second page to that appendix the proposed rules
23 of the Federal Trade Commission which outline how one
24 applies and what standards are used.

25 Q You referred to the
26 streamlining of procedures by some agencies to provide
27 indigent groups the rights to transcripts and special
28 filing rules. Is that set out as well to describe
29 what groups should be able to take advantage of that?

30 A It's essentially each

M.H. Rogol
Cross-Exam by Bayly

1 agency would be required, and this is the administrative
2 conference of the United States set aside, I think it
3 was '71, that suggestion, and essentially they're
4 looking at groups which have an interest and which
5 cannot afford to become involved, and they encourage
6 each specific agency to develop its own rules. Now
7 those rules could easily be pulled out of what the
8 Trade Commission has already done, as well as the
9 Kennedy legislation to allow attorney's fees to various
10 citizen groups.

11 Q Now, is there an analogy
12 in the public participation in American agency hearings
13 or Commission hearings to the procedure that has
14 occurred in this hearing where the two of the government
15 departments not only allow their internal experts to
16 be witnesses for any of the participants, but that they
17 permit these people to prepare during their working
18 hours their evidence and look after their costs for
19 travelling and accommodation in addition. Is that
20 something that happens in America?

21 A I would say these hearings
22 are analogous to the public counsel concept at the
23 state level in the United States, and that the government
24 through its own funding mechanisms has provided the
25 vehicle for representation.

26 Q Now, if I can turn now
27 just to your public interest corporations that you've
28 described.

29 THE COMMISSIONER: I'm curious
30 about that. When this Inquiry was established, the

M.H. Rogol
Cross-Exam by Bayly

1 Government of Canada on my recommendation agreed to
2 supply funds to native organizations, environmental
3 groups, northern municipalities and northern business
4 to enable them to participate here with lawyers,
5 staff, on an equal footing with the pipeline companies.
6 They adopted that recommendation. They considered as
7 well the possibility of setting up, the possibility of
8 doing something quite different. That is establishing
9 the office as an adjunct to the Department of Justice
10 which would be equivalent to the Attorney-General's
11 Department in your Federal Government, establishing
12 the office of public intervenor. He would be a lawyer
13 from the Department of Justice who would intervene at
14 proceedings such as this on behalf of the public
15 interest.

16 It's my view that the recommen-
17 dation I made and the government acted upon was much
18 more satisfactory because here we have the advantage
19 of having groups who understand what their special
20 interest is. They don't represent the public but they
21 represent interests which ought to be heard, and my
22 impression was that this public advocate or whatever
23 the expression was that you used was that that corres-
24 ponded in some respects to the notion of public
25 intervenor that was mooted in Ottawa.

26 A I think I misunderstood
27 the question then. Essentially what the analogy is,
28 for what has happened in this proceeding, is that you
29 have allowed attorney's fees and expert witness fees
30 we
and/are now trying to get on a federal level in

M.H. Rogol
Cross-Exam by Bayly

1 Washington.

2 Q Oh, I see.

M. H. Rogol
Cross-Exam by Bayly

1 Q Oh, I see.

2 A But if in fact the
3 counsel's office to the Commission has provided witnesses
4 and staff in assistance, that is also analogous to the
5 effort within the Public Council's Office of the ICC,
6 Interstate Commerce Commission in the United States.

7 Q Yes.

8 A So, in a sense you have
9 a combination of a couple of approaches that have gone
10 on in the United States. I might also like to add that
11 one of our concerns and this was one thing that attorney's
12 fees can adjust for specific proceedings like this
13 Inquiry but if you do establish some kind of regulatory
14 framework, there is a need for citizens to have the
15 kind of money where they can be around on a daily basis.

16 It's one thing having the
17 money to intervene in a case, but a lot of decisions
18 get made and a lot of the problems with regulation
19 occur because the regulators on a daily basis, the
20 staff of the Commission, get input just from one side
21 in a consistent way. One of the thoughts that should
22 be seriously considered would be to develop and that's
23 why we like the check-off idea, to make sure that there's
24 daily accountability and where citizens can have daily
25 participation, not just in the specific rate case,
26 because half of it's decided by the time the rate case
27 comes around.

28 MR. BAYLY: Now, am I to
29 understand from that response that your concern
30 with the ongoing agency is that the most valuable public

M. H. Rogol
Cross-Exam by Bayly

1 watchdog is this publicly funded lawyer or advocate of
2 some sort who's there on a daily basis as a kind of
3 agency counsel but from the public point of view as
4 opposed to any special interest point of view.

5 A I think from at least
6 the perspective that we have in Washington, we would
7 like to see and right now we're working in the State
8 of New Jersey with the Office of Public Advocate.
9 That is an internal government advocacy organization,
10 the advocate on behalf of certain citizen interests.
11 We also see most governments with Departments of
12 Commerce which is in fact--advocates business interests
13 within the government. But business has the opportunity
14 through trade associations and an ongoing income to
15 set up their own outside advocacy organization.

16 So, what I'd like to see is
17 an internal and external advocate on behalf of citizen,
18 environment and consumer interests whereby you have
19 a public counselor or public advocate within but you
20 also provide the mechanism whereby citizens can become
21 organized and have the kind of funding necessary to
22 counterbalance the trade associations. So, you have
23 advocacy within and without for both sides providing
24 the necessary countervailing influence.

25 Q And in addition, you
26 have the Public Interest Corporation as another possible
27 way of having public intervention at least on a case
28 by case basis, if not on a day by day basis?

29 A That's right.

30 Q And one of the questions

M. H. Rogol
Cross-Exam by Bayly

1 I have to you is something that has come up through
2 our experience that the public interest is something
3 that is very difficult for a single person, advocate
4 or whatever to define, let alone to represent because
5 the public interest appears to be very fragmented.

6 Do you run into that problem
7 with your public advocate role and how does he sort
8 out which interests in the public interest he pursues
9 in agency matters?

10 A Well, one of the reasons
11 why I advanced the notion of having an in-house and
12 citizen component is that when left alone, the public
13 advocate can get into trouble and I'll give you an
14 example. In the State of Maryland there was a
15 proceeding regarding a request by a local electric
16 utility for an increase in its rates and the citizen
17 group realized how large their rate increase was and
18 decided they wanted to intervene, were two days late
19 in filing their Notice of Intervention and they went
20 to the Public Service Commission requesting intervention,
21 the Utility objected as did the public advocate.

22 Finally a deal was struck
23 whereby the public advocate agreed to take their brief
24 and append it to his and submit it to the Commission.
25 Well, the day came for the brief of the citizen group
26 to go to the public advocate and he, in turn, changed
27 his mind and said well he's not really going to really
28 use their brief anymore and took it because they'd
29 already sent it by mail, took various sections of it
30 and included it as his own.

M. H. Rogol
Cross-Exam by Bayly

1 So, there are some problems
2 with a straight public advocate office. You've got
3 to take a look at all five areas as I've outlined in
4 the testimony and take what is best from all of them,
5 but there's really three key issues. It's got to
6 have money. It's got to have independence. It's
7 got to be accountable. I think what you're getting
8 at is the third which is the accountability. Unless
9 some mechanism is developed where the public advocate
10 has somebody to answer to other than the government
11 official or politician who appointed them, then there
12 is an opportunity for either an improper definition
13 of the public interest or no input as to what is the
14 proper definition of the public interest and our
15 advocacy, the check-off approach is designed to let
16 the citizens themselves through the selected boards
17 after they've contributed, to work out what they feel
18 are the various public interest issues, so that it's
19 done within a democratic framework.

20 Q I gather one of the
21 problems--

22 THE COMMISSIONER: Excuse me,
23 Mr. Rogol, you said funding, independence and
24 accountability. Independence not of the people whose
25 interests were represented, but you mean independent
26 of the industry and the regulatory agency?

27 A That's correct.

28 Q Sorry.

29 MR. BAYLY: I gather one of
30 the problems with the Public Interest Corporation that

M. H. Rogol
Cross-Exam by Bayly

1 you've outlined is that the remedy of the citizen who
2 feels that his interests are not adequately represented
3 is to get his two dollars back or to stop contributing,
4 whatever the rules are for that. That's a remedy that
5 involves not participating as opposed to being able
6 to influence the kind of participation.

7 A Right, but the kind of
8 monies that are necessary for an organization like
9 that to fulfill its responsibilities are of such a
10 level that one is going to have to be responsive to
11 a lot of different citizen interest groups, otherwise
12 you'll never raise the kind of money to do any of this.

13 Q That was my next question
14 and that is what size in terms of dollars per year
15 or dollars per month does one of these corporations
16 need to participate in an ongoing fashion or in a
17 case by case fashion? Has any analysis of that sort
18 of thing been done?

19 A Well, it depends on the
20 communities, the level of income, how many regulatory
21 type proceedings that we'll have to intervene in and
22 we have used it in the States to relate to electric,
23 natural gas and telephone utilities, which is a very
24 big bite of the apple. We thought in a smaller state
25 like Connecticut an organization could easily, if
26 run properly, raise a million dollars without any
27 problems that should cover the intervention.

28
29
30

M.H. Rogol
Cross-Exam by Bayly

Q Generally **they are statewide** corporations, are they?

A That is correct. Now, one thing I might add, although that is what we advocate on a state level in the United States, if you have to check the population, number of households and income level because you're not going to get everybody contributing right away and you're going to need probably we've done some analysis of direct mail fund-raising and various experts have suggested that if done properly, after a year we could probably extract 20% of the households to contribute the \$2.

Now you've got to figure out what 20% of the households means here, and how much money that could provide. If it doesn't provide a lot of money, there may be some value in combining some of the various concepts with some intervenor's fees or the public counsel with some type of citizen-elected Board that would appoint the public counsel and the public counsel would have to answer to them.

Q And does it in fact happen in American hearings of any sort that the public interest, if we can call it that, is represented by the two types of public advocates -- the agency and external by a public interest corporation and by indigent groups who have received special funding or who have been guaranteed their fees for witnesses and counsel?

A In a number of states you have a number of different components in there at the same time.

M.H. Rogol
Cross-Exam by Veale

1 MR. BAYLY: Those are all
2 the questions I have, thank you, sir.

3 MR. SCOTT: Mr. Veale?
4

5 CROSS-EXAMINATION BY MR. VEALE:

6 Q Mr. Rogol, have either you
7 or your organization been monitoring the public interest
8 aspect of the Alyeska Pipeline construction?

9 A There have been components
10 of the organization. However, I am not part of that
11 component so I have really little, if any, information.

12 Q I see. Well, one thing
13 that has been brought before this Inquiry is the possi-
14 bility of having a specialized single agency established
15 to monitor and conduct surveillance of the construction
16 and the operation of the pipeline, and I was wondering
17 if you had any recommendations to offer with respect
18 to having the public interest represented adequately
19 in such an agency?

20 A Well, one monolithic
21 agency, depending on its powers, depending on how
22 open it is, can do good or can do damage, depending
23 who are the regulators; and I would not support any
24 -- the creation of any regulatory authority without
25 institutionalizing mechanisms to ensure the same kind
26 of input that this Inquiry is getting, would be given
27 to that regulatory authority, that all the various
28 elements have to be heard or they can^{'t} make a reasonable
29 decision and the citizens will lose faith in the
30 government's ability to represent and protect their

M.H. Rogol
Cross-Exam by Veale

own interests.

Q Well, perhaps you can assist us on what sort of mechanisms are required for this, because as you can appreciate, the -- one comment will be, "Well, the regulatory process has been completed, the Mackenzie Valley Pipeline Inquiry has heard everything and now let's get on with the business of building this pipeline."

There will be scheduling and timing that will be required. In other words, there are certain difficulties with having, you know, Court access and complete public access where it is going to stall construction. These are the issues that are being faced and are there any particular -- you mentioned these particular keys. Are there any of them that are of value in making sure the public interest is represented but on the other hand, not causing interminable delays and so on in the construction process.

A Well, if in fact the regulatory authority that is created is doing its job, acting within its statutory guidelines and its own regulations, there is little delay that can occur. One of the aspects of attorney's fees as an example, and there are various standards that the interest groups have to meet to receive fees. One would assume that there is enough confidence in the regulatory authority that if somebody is just in there to hinder and cause delay, that the regulatory authority, a) can withhold funds or, b) discipline them as any judge would

M.H. Rogol
Cross-Exam by Veale

1 do in a Court of law.

2 Q Well, one of the
3 difficulties that may be faced is that the regulatory
4 agency will not in fact hold a public hearing. In
5 other words, they will hire experts who will work
6 closely with the applicant pipeline company to determine
7 the method of construction procedure, and the difficulty
8 is where ^{does} the public interest fit into such a process
9 where you're not even in a public hearing format?
10 Am I getting through to you?

11 A No, I'm not sure I
12 understand what kind of regulatory process you developed.

13 THE COMMISSIONER: In connec-
14 tion with our different groups are these administrative
15 decisions?

16 MR. VEALE:

17 Yes, that's precisely
18 it. It strikes me that a great deal of the work of
19 whatever agency monitors the pipeline construction
20 will be of an in-house nature and the question I have
21 is they won't be holding public hearings. They will
22 say that the Berger Inquiry looked at all those issues
23 and now we're going to implement them. We can't do it
24 with the public interest looking over our shoulder.
25 This was a view expressed, I think, by Mr. Templeton
26 and his panel when questioned about the public
27 interest being represented.

28 MR. SCOTT: Yes, but might I
29 interject here? That view is, of course, a view that
30 may not be shared when the government decides what
31 kind of authority will supervise the construction of

M.H. Rogol
Cross-Exam by Veale

1 a pipeline, and the point of calling this evidence,
2 Mr. Veale, as you've no doubt apprehended, is to
3 deal with the kind of problem that was presented
4 graphically by Dr. Thompson yesterday where we have
5 established that an authority which has power to
6 amend and vary stipulations, power to implement or
7 to refuse to implement, and whether there should be
8 some mode of ensuring public representation in that
9 process.

10 MR. VEALE: Well, I think
11 we're driving at the same issue, Mr. Scott. I was just
12 asking a question of Mr. Rogol if he has any views on
13 how the public interest should be put into that
14 process.

15 A Well, my concept of
16 how regulatory authorities work is that they have
17 statutory responsibilities which have been defined
18 to some extent through their regulations. Now, I assume
19 that when this -- I'm assuming this model is
20 created that it will be created with some statutory
21 guidelines flexible enough that it can move within
22 them, but yet clear enough that the agency would know
23 what its responsibilities are, and the public will also
24 know what the agency's responsibilities are.

25 Also, the agency will have
26 to develop rules and regulations to implement that
27 statutory authority. Now, any time the agency goes
28 beyond either the statutory or -- statutory or own
29 regulations, it is clear that there is illegality
30 occurring and public interest interveners or any

M.H. Rogol
C ross-Exam by Veale

1 intervener maybe going too harsh, and the pipeline
2 company finds what they're doing is inappropriate.
3 At that point anybody should be able to intervene to
4 challenge the illegality.
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M. H. Rogol
Cross-Exam by Veale
Re-Examination

1 Q You're contemplating a
2 challenge to the Courts then if the regulatory authority
3 is not following its own statutory powers?

4 A That depends. We have
5 what is known as the Administrative Procedure Act,
6 which provides various procedures when certain events
7 occur. There's a doctrine that you have to exhaust
8 your administrative remedies. So, there may be a
9 provision within the agency so that you go to that
10 agency and ask them--to petition that agency to act
11 within the bounds of their own statute and regulations.

12 If they don't, then you have
13 an appeal to the Court. So, I assume there will be
14 various procedures. Either there will be an overall
15 procedure in Canada or this agency will have certain
16 procedures by which it should act and if it does not
17 have procedures by which it should act, then a
18 recommendation might well be made when that agency
19 is created that certain procedures be established.

20 MR. VEALE: I have no further
21 questions.

22 MR. SCOTT: Mr. Hollingworth?

23 MR. HOLLINGWORTH: I have no
24 questions.

25 MR. SCOTT: Mr. Ziskrout?

26 MR. ZISKROUT: I have no
27 questions.

28 RE-EXAMINATION BY MR. SCOTT:

29 Q Mr. Rogol, just one or
30 two to be sure I understand. You've concentrated in

M. H. Rogol
Re-Examination

1 discussing the operation of an administrative agency
2 on fundamentally two things; the possibility that the
3 agency may act illegally, that is act beyond its
4 charter or statute and secondly, that where it has a
5 discretion to act, it may act unfairly or against the
6 public interest.

7 Have I got that right? Those
8 are the two things which you think demand public
9 interest intervention and participation?

10 A Yes, that's probably
11 fair, if I can lay a philosophical foundation.

12 Q Well, without being
13 philosophical just for the moment, for example, an
14 agency which grants a rate increase, if it grants
15 a very large rate increase, isn't acting beyond its
16 statute necessarily, but it may nonetheless be acting
17 unfairly or against the public interest as perceived
18 by certain groups.

19 A That's correct.

20 Q And it's these two things
21 that concern those who are anxious to assure the
22 existence of public interest advocacy?

23 A That's right, and another
24 example where the agency within its discretion gave
25 to the industry more money than it deserves, most
26 likely that will have occurred because the only
27 evidence that it heard from the outside was from the
28 industry itself.

29 Q So, that any agency which
30 operates against the backdrop of a statute or fixed

M. H. Rogol
Re-Examination

1 stipulations or which has a discretion to exercise is
2 an agency that public interest groups should be
3 interested in?

4 A Oh, clearly.

5 Q Yes. I take it that you
6 make no distinction between the application of that
7 principle to an agency which grants a license to do
8 something on the one hand and on the other, an agency
9 which is granted a mandate to supervise or run a
10 particular project.

11 A I would make no distinction
12 as to any kind of agency. I think citizen input into
13 anything government does is important.

14 Q Yes. But that, for
15 example, an agency that grants a license to build an
16 electrical power plant is no different, from your
17 point of view, than the government agency which is
18 established to run and develop stipulations for that
19 power plant?

20 A That's correct.

21 MR. SCOTT: Yes. Those are
22 all the questions I have. Thank you, Mr. Rogol.

23 THE COMMISSIONER: Well, thank
24 you very much, Mr. Rogol. I think I should say that
25 I spent a large part of my career as a lawyer challenging
26 the work of administrative tribunals in the Courts and
27 the evidence you gave is very interesting and I'll
28 look forward with even greater interest to reading the
29 appendices that you brought with you.

30 A If I may add, I'm not sure

M. H. Rogol
Re-Examination

1 seeing the flexibility with which evidence has been
2 introduced here, I bring you regards from Washington
3 from Mr. Nader.

4 THE COMMISSIONER: Fine.

5 Thank you.

6 (WITNESS ASIDE)

7 MR. SCOTT: After that
8 diplomatic exchange--

9 THE COMMISSIONER: Maybe
10 we could take a five minute break, Mr. Scott.

11 MR. SCOTT: Yes, sir.

12 (REPORT - ENVIRONMENTAL COMPLIANCE AND THE PUBLIC
13 INTEREST DURING CONSTRUCTION OF THE TRANS-ALASKA
14 PIPELINE - G. M. ZEMANSKY, SEPTEMBER, 1976 MARKED
15 EXHIBIT 870)

16
17 (STATEMENT OF UNDER-SECRETARY KENT FRIZZELL MARKED
18 EXHIBIT 871)

D.W. Norton
C ross-Exam by Bayly

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

DAVID W. NORTON, resumed:

CROSS-EXAMINATION BY MR. BAYLY:

Q Dr. Norton, we've discussed with various witnesses at this Inquiry water availability particularly on the North Slope, and I understand that there were problems in Alaska and in particular with water taken from pools in the Sagavanirtok River and from groundwater sources beneath the river. Are you acquainted with that problem?

A Yes, I wish I were more acquainted, but basically yes.

Q And I understand that taking this water had an adverse effect on fish and fish eggs. Is that your understanding?

A More importantly than with fish eggs, with fish themselves in the critical period of the year, that is mid-winter when water supply was critically short for both men and fish.

Q Had it been contemplated earlier in the design reviews and in the considerations that led up to orders to proceed that it would be a problem taking water from the -- from this river?

A Yes, there had been some pre-construction studies of just how you identify water sources, what kind of recharge you needed to guarantee, but the magnitude of the problem has been much bigger than anticipated.

Q Was that because there

D.W. Norton
C ross-Exam by Bayly

1 was an estimate for water requirements that was too
2 low?

3 A Yes. My understanding of
4 it is that estimates for water requirements were based
5 on human needs, showering, drinkable water, and what
6 is at issue in fact technically is not part of the
7 pipeline itself, that is as far as the right-of-way
8 lease and so forth. It is part of the Prudhoe Bay
9 oil field operations. The major water demands is fresh
10 high-quality water, low salinity water for I believe
11 it's called -- I forget the correct term for it but
12 it's well-drilling to prove a reserve. Maybe you can
13 help me.

14 Q Well, I think I understand
15 that it's used in the exploration part of the development
16 of an oil and gas field.

17 A Correct.

18 Q One of the other problems,
19 I understand, that took place at this particular river
20 was that the flood plains had been allocated in part
21 for the mining of gravel for work pads and other
22 facilities.

23 A Correct.

24 Q And as I understand, there
25 was a larger quantity of gravel as well as water taken
26 from the flood plains of this river than had originally
27 been applied for.

28 A I don't know that any
29 gravel was taken that was not applied for. But the
30 end result is that there was a lot of gravel taken.

D.W. Norton
Cross-Exam by Bayly

Q Is the problem then one in which the effects had not earlier been anticipated or was it a question of being prepared to put up with the effects of taking a large amount of gravel?

A Well, let me point out to be sure that this is clear, a lot of the gravel mining was undertaken prior to construction of the pipeline itself. It was for surface transportation roads in the Prudhoe Bay area, before the Pipeline Act was signed into law. The water mining has been subsequent to construction of the pipeline, at least we have known about it. However, the Prudhoe Bay field is leased to the various companies and is not subject to surveillance by JFWAT or the state pipeline co-ordinator's office, so in a sense we can't go inside that fence. It's generally -- we learned about things going on in the field and tip off, for example, the State Department of Fish & Game, and suggest that maybe they ought to look into it. But it has been a problem and there is every reason to suggest that for the Mackenzie Delta, for example, people need to be very sensitive about the availability of water. It might not be a problem, but it certainly ought to be investigated.

Q Now, one of the witnesses we had here yesterday, Mr. Skinnarland, was commenting that it is these ancillary activities that are necessary to the development of oil and gas production fields and the construction of pipelines which appeared in Alaska to have the greatest detrimental effect on the

D.W. Norton
Cross-Exam by Bayly

1 environment and on the people, the building of stockpile
2 sites, of wharves, of ancillary roads, as contrasted to
3 the construction of the pipeline and the work on the
4 right-of-way itself. Would that be something that you
5 would agree with?

6 A I would certainly think
7 that that's a distinct possibility. I don't know what
8 the weight of environmental problems between the two
9 piles is, but I was surprised how important the ancillary
10 activities were in terms of total fraction of the day
11 that surveillance personnel needed to devote to these.
12 Perhaps it's because they weren't thought out as well
13 as the direct problems of putting a big pipeline in the
14 ground, or above the ground.

15 Q And if you were to make a
16 recommendation about this, would you recommend that
17 the quality and amount of surveillance of the ancillary
18 activities be as intense as the surveillance of the
19 pipeline construction itself?

20 A Either that, yes, or to
21 try to keep the total staff of surveillance effort down,
22 to try to anticipate these problems, model them in
23 advance, you know, conceptualize them ahead of time,
24 and be prepared for them. Then I think there would
25 be more nearly equal or some better balance between
26 direct pipeline and ancillary effects, as far as the
27 manpower required to look after them.

28 Q Now, having seen the
29 -- some of the problems that were associated with gravel
30 and water mining on the North Slope of Alaska, would

D.W. Norton
Cross-Exam by Bayly

1 you have some recommendations on the actual physical
2 operations and how they be carried out as opposed
3 to the surveillance?
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D. W. Norton
Cross-Exam by Bayly

1 A Do you mean as to the
2 physical development, the engineering and construction?

3 Q Yes.

4 A Well I guess I have to
5 go to an analogue anticipating the same things will
6 happen with further Alaskan Arctic slope development.
7 We are, in terms of offshore problems, requesting the
8 federal government to assist us in a very careful
9 analysis of gravel resources on one hand, a very care-
10 ful analysis of what alteration in the gravel sources
11 offshore and onshore, what their mast balance are.
12 For example, right offshore, you have longshore sediment
13 transport which involves high grade select materials
14 that could be used in construction, but we don't know
15 what happens if you take a slug out of an offshore
16 reef or barrier island. We're also asking for assis-
17 tance from the federal government to help us model
18 industrial activity onshore and offshore to project
19 water requirements, to project gravel requirements,
20 so that we can deal with a -- you know, a lifesize
21 problem rather than attacking it blind. We've actually
22 considered in modelling the possible regulatory stance
23 on such matters, requiring alternative modes of operation
24 to the use of gravel for transport. For example,
25 artificially thickened ice, we've considered the
26 possibility requiring desalination plants in the
27 immediate Arctic offshore to get away from onshore
28 or estuarine water mining. These are examples of
29 alternate solutions.

Q Now we heard from some

D. W. Norton
Cross-Exam by Bayly

witnesses from the North Slope Borough and one of their comments was, that in terms of scarcity of supply, oil and water may be more valuable resources on the north slope of Alaska than oil and gas are, and that as much care should be taken about their allocations to the various interests whether they be on the one extreme leading them along and on the other extreme, using them for man's purposes as in any one problem that has to be dealt with in northern pipeline construction.

MR. SCOTT: I think Mr. Bayly intended to compare gravel and water.

MR. BAYLY: Oh, I'm sorry, I meant to put gravel and water on one side and oil and gas on the other.

MR. SCOTT: We're familiar with the baskets that Mr. Bayly uses in asking for these answers.

A I would say that that suggestion from the North Slope Borough bears very careful looking at. I think they are in a position to know perhaps better than people as far removed from the action as myself in Fairbanks, if they suggest that I think that's something that should definitely be investigated in great detail.

MR. BAYLY:

Q In some evidence before the Federal Power Commission by Dr. LeResche. Dr. LeResche made the following statement and I want you to tell me whether he has been overstating the case or whether you'd agree with him. He said, "we have also

D. W. Norton
Cross-Exam by Bayly

1 learned of the inability of the construction industry
2 to cross streams in the winter with buried pipelines."
3 Has stream crossing been as great a problem as you've
4 outlined in this evidence in your opinion?

5 A I believe it has. I
6 don't know the specifics on which he is basing that
7 very general comment, but I would back his judgment.

8 Q What are the problems
9 that haven't been solved by the pipeline industry in
10 crossing streams in winter in Alaska?

11 A Well they back to prob-
12 lems of fisheries habitat, they go back to problems of
13 siltation of possible downstream areas of spawning
14 where eggs may be in the gravel at the time of crossing,
15 they go to the problem of icing over when you're trying
16 to maintain an open trench to do work in, in stream,
17 and I'm thinking now, that perhaps one of his specific
18 examples that he had in mind is the Federal Power
19 Commission Hearings, was that which necessitated blasting
20 after some kind of shutdown or equipment problem.
21 Blasting of the ice that had refrozen over the supposedly
22 open work trench and this created a great deal of con-
23 fusion and unhappiness between the statutorily bound
24 Department of Fish and Game, which can not allow
25 blasting in fish sensitive habitat on one hand and it
26 also can not afford to investigate to the nth degree
27 whether there is any fish anywhere in the system that
28 might be directly harmed or suffer habitat loss. So,
29 if that is the example that he had before him, I think
30 it's quite a real one. The techniques the methodologies

D. W. Norton
Cross-Exam by Bayly

1 the physical problems of stream crossing in the winter
2 can stand a lot of improvement or some kind of search
3 for alternatives.

4 Q Now was he being too
5 general. Are there streams of a certain size that
6 can be crossed without difficulty or would you agree
7 that it may -- there may be problems in crossing
8 streams of any size; that haven't been solved in the
9 Alaskan situation?

10 A Streams that really
11 thoroughly freeze or dry up in the winter are less of
12 a problem I suspect because your not in active fish-
13 eries habitats. On the other hand, those small ones
14 tend to be the hardest ones to actually delineate to
15 understand the hydrology of -- and certainly one can
16 get almost no feeling at the time of/^amid-winter crossing
17 for how that stream actually behaves as a fisheries
18 habitat, that has to be done in the summer. Streams
19 over a certain size may present less of a problem
20 because you can flume, you can redirect water temporarily,
21 you can blast or rock soil or manage to excavate cleanly
22 behind some barrier to silt water interaction.

23 Q Now Dr. Norton, we've
24 heard that in the Alyeska situation, that the company
25 has encouraged competition between pipeline crews to
26 try and speed things up. Are you aware of this situation,
27 can you comment on any problems that it may have raised?

28 A I'm not aware of its
29 real institutionalization, no formal competition.

30 Q Apart from its formal

D. M. Norton
Cross-Exam by Bayly

1 institution, are you aware of there being informal
2 competition on spreads to get various jobs done?

3 A Yes, generally there's
4 I think, some constructive competition to meet distance
5 and completion quotas. There's also some very de-
6 structive competition to see which spread can get
7 which pile of gravel first, so that they will have
8 less of a distance to haul select materials.
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D.W. Norton
Cross-Exam by Bayly

Q And is that between the various contractors, or in the -- just in the individual firms between the men in them?

A As far as I know, it's between different contractors, stories abound particularly in the northern-most section, as to the contractor which is building pump stations and the contractor which was doing the pipelining, stealing each other's gravel back and forth and back and forth. It got to be, you know, sort of sad to watch this happen, and it became a personality clash, very little co-operation among different contractors as to the use of equipment. "Can we borrow so many rigs for a couple of days to complete this critical element?"

I have heard stories that the response would be not only, "Hell no," but there will be a stronger memo to follow.

Q Now, we have a copy here which I'll introduce as an exhibit shortly, Mr. Commissioner, of the State of Alaska office of the pipeline co-ordinator, the Annual Report for 1975. Is that a report that you're familiar with, Dr. Norton?

A No, it's not. I'm aware that there is an Annual Report. I've never read that one.

Q In this report -- and I'll just tell you what this particular statement is and you can perhaps elaborate on instances if you know of them -- Alyeska was required in some instances to alter or completely change its design during review

D.W. Norton
Cross-Exam by Bayly

1 processes. Is that something you're acquainted with,
2 and perhaps you can tell us whether these are major
3 design changes in your experience?

4 A Oh yes, they ranged from
5 very minor to very major, and the design review process
6 is something that not only JFWAT but other disciplines
7 were intimately involved with.

8 Q And did this have any
9 effect or a great effect on the route alignment?

10 A I'd have to say all too
11 little effect on route alignment. Once an alignment
12 was selected in our experience, the inertia was so
13 great, so much designing, expertise, time, and money
14 had been thrown at it that it was very hard to stop
15 that ball rolling in one direction and move it in
16 another direction.

17 Q Now, when the JFWAT and
18 other agencies would step into this, I take it it was
19 after Alyeska had produced what it would call its
20 final design.

21 A Its final design?

22 Q Its final design.

23 A Well, in theory JFWAT
24 was afforded input at initial design or intermediate
25 design stage. You'd almost have to have been present
26 during the deluge of paper work -- and I'm talking
27 about big sheets of paper that you can't deal with
28 in filing cabinets, you have to have special map racks
29 to accommodate these things to realize how nearly
30 impossible it is to keep up with the flow of this high-

D.W. Norton
Cross-Exam by Bayly

1 speed engineering design, let alone the high-speed
2 construction, and frankly, we just couldn't keep up.
3 We overlooked at the first go-around some extremely
4 obvious problems that had the pace been a bit slower
5 or had we had time to become a little more adept with
6 blue-line drawings, we probably could have caught.

7 Q Now, you told us about
8 some of the problems with compliance by contractors.
9 I understand one of the problems that you dealt with
10 specifically was the kerosene heaters used for thawing
11 culverts. Could you tell us a bit about that problem
12 and how you found it had to be dealt with, in your
13 experience?

14 A Yes. The haul road
15 immediately north of the Yukon for about 150 miles turned
16 out to be beset with a number of warm water -fed streams
17 which would glacier, that is technically speaking form
18 aufeis during the winter. Warm water would continually
19 flow over the surface of the ice and build up the
20 surface to thicknesses of as great as three to five
21 meters, in some cases. This meant that culverts through
22 which the summer discharge was supposed to flow would
23 without some counter measures, tend to completely
24 ice up and come spring runoff, the water having no
25 place else to go, would travel over the road surface
26 and threaten to wash it out.

27 The Alaska Department of
28 Highways has for years maintained culverts in aufeis
29 areas with a variety of improving or revolving devices
30 designed to raise the water temperature by a tenth of

D.W. Norton
Cross-Exam by Bayly

1 a degree at the inflow end of the culvert so that it
2 would not freeze in the culvert. It takes the subtrac-
3 tion of a great deal of latent heat from water to actually
4 get it to freeze, and if on entering the culvert the
5 water is heated up by an imperceptible amount, it
6 can travel through even in a fairly slow trickle
7 without building up in the culvert.

8 The Alyeska experience on the
9 haul road, given that they were charged with maintaining
10 the haul road in its integrity, was very unfortunate
11 the first winter, in that they took basically the highway
12 design for culvert heaters, they're also called moose
13 warmers and a variety of other terms, and they for some
14 reason decided that they could not use the fuel which
15 the Department of Highways was using, namely, automobile
16 gasoline. But they had to, for some purely imaginary
17 reason, they had to use diesel fuel.

18 The design that they had in
19 hand was not designed-- was not adequate, did not
20 bring in enough air to ensure complete combustion of
21 diesel fuel, which is of a lower volatility. The result
22 is that the flame in the culvert heaters, as used by
23 Alyeska, would go out, it would drown itself, and only
24 with only periodic rechecking of the individual culvert
25 heaters they would soon overflow and tip over and
26 freeze in the ice, spill oil, or even if they were
27 burning as they were designed, would not combust the
28 mixture adequately. Black sooty smoke would result and
29 this fell out on the surrounding ice surface. Some of
30 the more toxic components of diesel fuel may have

D.W. Norton
Cross-Exam by Bayly

1 actually entered fish habitats.

2 An additional problem in this
3 regard was that the haul road was not covered by the
4 right-of-way lease stipulations. Therefore the Federal
5 Alaska Pipeline Office did not feel itself empowered
6 to correct this situation. It was left up to the
7 Alaska Department of Fish & Game, and Department of
8 Environmental Conservation, more or less outside of
9 JFWAT, that is, to insist on a cleanup of this
10 operation. It was very slow in coming. There was
11 in my mind a great deal of stream and fisheries habitat
12 poisoning that resulted from these culvert burnings.

13 This year -- well, last year
14 and this year Alyeska has finally gone to a system
15 where they keep either resistance wires in the culverts
16 or they visit permanently installed steam lines with
17 a steam generator mounted on a truck and clear out the
18 lines. However, it took a great deal of brow-beating
19 and threatening and everything else, threat of Court
20 action specifically, to get Alyeska to clean up its
21 act or its contractor's act.
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D. W. Norton
Cross-Exam by Bayly

1 Q Now, I understand that
2 certain problems have occurred and continue to occur
3 despite the fact that your office and the offices of
4 other surveillance agencies has been monitoring,
5 brow beating, taking Court action and whatever. Would
6 you tell me if these items in this list are included
7 in those? One is problems related to stream crossings
8 which I think we've discussed to a certain extent.

9 A Umm-hmm.

10 Q Another is erosion
11 control.

12 A Certainly.

13 Q Another is rehabilitation
14 and revegetation of right-of-way and ancillary
15 facilities?

16 A I've been told that that
17 is as much as problem now as it even was.

18 Q Oil spills.

19 A I can't answer that.
20 I don't know--I know the oil continues to be spilled.
21 Whether the absolutely unescapable spillage of oil
22 associated with construction is now being adequately
23 met with counter measures by Alyeska, I can't say.

24 Q Another is the location
25 and maintenance of material and disposal sites.

26 A That most certainly is
27 a problem and I'd just like to say one thing on that.
28 We cannot find, as members of the public, we cannot
29 find easy answers or any easily forthcoming management
30 plan or decision-making framework for which access

D. W. Norton
Cross-Exam by Bayly

1 roads, which material sites, what associated facilities,
2 who's going to assume jurisdiction. We just can't
3 find these things out. We're considering very strongly
4 asking for what amounts to public disclosure, sort of
5 a public forum on the whole operations and maintenance
6 phase of the pipeline, particularly north of the
7 Yukon. This goes back to the problem of public
8 scrutiny and public input.

9 Q Now, even with this
10 public scrutiny, is it your opinion that these problems
11 or some of them are inevitable in a pipeline project
12 or can you recommend some method of either planning
13 to obviate them or dealing with them as soon as they
14 occur?

15 A Knowing matters of erosion
16 control and rehabilitation, it simply has to be more
17 than a stated objective of a permittee that he will
18 do the rehabilitation and erosion control in a timely
19 manner. It's not good enough to pay lip service to
20 this. It must be done within certain time and
21 seasonal constraints to mean anything. In respect to
22 oil spills, I think on the Alaska line we've seen
23 excellent responses when Alyeska would say, you know,
24 really we have a serious problem. Let's all sit down
25 and figure out how to go about it and then do it and
26 we'll take equipment and manpower as necessary to
27 correct a specific situation or a general one. What
28 was the last point?

29 Q The last one was
30 material and disposal sites and access roads.

D. W. Norton
Cross-Exam by Bayly

1 A On that I think it
2 has to be recognized early on that there may be
3 continuing needs for materials. I don't think there's
4 any way to build a work pad or road and getting certain
5 backfill of pipe ditch done without these continuing
6 needs for materials. The public, the conservation
7 groups ought to acknowledge that and for its part
8 the permittee should acknowledge that maybe the public
9 has some good ideas about which access roads, which
10 ancillary facilities need really to be put to bed,
11 others need intermediate solutions so that during
12 operations and maintenance, an acceptable configuration
13 of access to these materials can be gained and again
14 it needs good candid public discussion.

15 Q Now, apart from the
16 surveillance that you've outlined as being responsi-
17 bilities of the various governments and your concern
18 that the public have access to and input into the
19 planning for what is to be done with various facilities.
20 I understand in the Alyeska situation, there were
21 procedures set up for in-house surveillance and as
22 I understand, these have dealt with environmental
23 protection, quality control and quality assurance.

24 I don't know whether it's
25 possible to separate these out in their various
26 meanings. Can you tell me first of all, were there
27 three departments in the company, if we can call them
28 that, or three sets of employees who dealt with these
29 three subjects?

30 A There may have been three

D. W. Norton
Cross-Exam by Bayly

1 sets of employees. I could never keep them straight
2 or figure out first of all what the ideal role--I
3 couldn't give you a description at this point that
4 would clearly distinguish between quality control and
5 quality assurance. In the second point, we never saw
6 any meaningful quality control or quality assurance.
7 I think, as I testified, JFWAT ended up spending a lot
8 of its time doing what I thought was the permittees
9 job.

10 This is largely quality
11 control, determining that yes or no such and such an
12 element of the pipeline or related facilities was built
13 as designed. If not, there should be a non-conformance
14 report, an audit in some form, and the situation
15 should be corrected. We never were very satisfied
16 with quality control or quality assurance auditing
17 procedures. We found untruth to obtain in that in-
18 house surveillance.

19 Q Can you give us an
20 example or two of the kinds of things that JFWAT had
21 to do that you felt were quality control and assurance
22 matters?

23 A Yes. The most obvious
24 was measuring work pads to bottom of pipe distance
25 where it was specified in the final and approved
26 Notice to Proceed engineering drawings that this was
27 a big game crossing and it would be specified in there
28 the minimum clearance acceptable. These clearances
29 were very often not in conformance.

30 Q Do you feel that company

D. W. Norton
Cross-Exam by Bayly

1 surveillance, whether it's divided this way or whether
2 it's done some other way could be a valuable thing in
3 the construction of northern pipelines?

4 A Most definitely.

5 Q Do you have any
6 recommendations that you thought of that might improve
7 this in-house surveillance over what you observed in
8 the Alyeska situation?
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D.W. Norton
Cross-Exam by Bayly

1 A I have no magic
2 recommendations. I think that the best talent that
3 can possibly be found should be put into this inhouse
4 surveillance, and that this talent needs to be very
5 candid and have a high footing within the permittee's
6 organization.

7 He cannot be relegated to
8 the role of a flack man or somehow kept out of the
9 action or threatened with losing his job for apparently
10 seeming to threaten the project with a slowdown.

11 Q Do you feel he should be
12 a company employee or should there be some status that
13 he has with the company that would guarantee the kind
14 of independence he might need to avoid the brow beating
15 situation you have alluded to?

16 A Well, I think it could
17 work within the company -- this internal surveillance.
18 Often overlooked is the fact that with all the nasty
19 things we hear about the Alaska pipeline, many things
20 work exceedingly well. Now, we don't tend to dwell on
21 the positive aspects. There are sections -- whole
22 construction sections -- which seem to run smoothly on
23 their own and they need a minimum of guidance or problem
24 solving that involves governmental entities and I submit
25 that in those sections if you analyzed it closely, you
26 would find that the people who are the major players are
27 also unique or distinguished by the fact that they will
28 eat in the chow halls together and they become good
29 friends. This is not to suggest that they are being
30 co-opted on either side but they respect each other

D.W. Norton
Cross-Exam by Bayly

1 rather than spinning their wheels trying to discredit
2 their opposite numbers.

3 Q Are you suggesting that
4 no matter what we do, we may run into construction
5 spreads where things just don't work no matter how
6 marvelous a system we design as well as the positive ones
7 where no matter how bad the system is things will
8 work?

9 A I would expect that you
10 would have some of both, yes.

11 Q Now, could you tell us
12 one of the things that didn't come up in your evidence
13 or cross-examination when you were here last was just
14 what the responsibilities were or are for the various
15 government agencies. JFWAT has certain responsibilities.
16 I understand that there's an outfit called E.E.I. that
17 has other responsibilities and there's the state
18 pipeline office. There may be others. Can you just
19 briefly outline what each agency had as its -- the
20 perimeter of its authority?

21 A Beginning with JFWAT, this
22 was an assembly of primarily biologists but also had
23 at its disposal engineering, that is, inhouse
24 engineering, and inhouse hydrologic expertise. That
25 was their purview or their territory to be advisory to
26 the two pipeline offices.

27 The state pipeline
28 coordinators office was primarily to guarantee pipeline
29 integrity over the long haul. Also, though, as I
30 pointed out that the necessity for timely completion

D.W. Norton
Cross-Exam by Bayly

1 was a big part of their mentality or philosophy.
2 Also, under the state pipeline coordinator's office was
3 the matter of aesthetics. The federal pipeline office
4 had generally the same purview as the state pipeline
5 office, but it felt that it needed the input of
6 subcontractors or third party contractors principally
7 an outfit known as M.R.I. -- I believe that stands for
8 Mechanics Research Incorporated.

9 Mechanics Research
10 Incorporated was detailed to do a lot of the swoop from
11 behind the billboard business of spotchecking, making
12 sure that the as-built and the designs were pretty much
13 in conformance as far as pipeline or pad or whatever
14 integrity, as far as materials, as far as welding
15 quality.

16 M.R.I. was not corporately
17 sufficient in expertise, in ecological water quality,
18 air quality matters so they in turn subcontracted to
19 E.E.I. which is short, I believe, for Ecology and
20 Environment Incorporated. They undertook as part of
21 the third party responsibility to check on distribution
22 of fish and their free passage and so forth-- directly
23 responsible to the Alaska pipeline office and its
24 representatives.

25 Q Right and who looks after
26 the problems of sewage and the problems of erosion
27 control -- was that the state pipeline?

28 A Generally as far as erosion
29 control, both state and federal pipeline offices were
30 primarily responsible as erosion control affected either

D.W. Norton
Cross-Exam by Bayly

1 one, aesthetics in terms of re-vegetation or two,
2 pipeline integrity in the case of threats to elements of
3 the pipeline itself.

4 JFWAT got into the act
5 in that the control of erosion bore directly upon stream
6 habitat siltation.

7 Q Okay, and that was only for
8 the pipeline right-of-way. Once we get into the
9 ancillary facilities, we are back to the normal state
10 federal, municipal organizations which look after other
11 things in Alaska?

12 A Almost. Some of the
13 ancillary facilities were quite well covered by the lease
14 stipulations and authority as I have just outlined. In
15 the Alaskan situation by seconding the authority normally
16 belonging to the Commissioner of Natural Resources to
17 the person of the state pipeline coordinator and on the
18 federal side from seconding the responsibilities of the
19 Bureau of Land Management to the authorized officer of
20 the Alaska pipeline office.

21 Q In situations where a
22 problem arose which hadn't been contemplated either in
23 initial or final designs, how did JFWAT or any of the
24 other agencies deal with this sort of situation either
25 in the field or in the office?

26 A If, for example, the lease
27 stipulations didn't quite cover a problem that arose
28 that had not been anticipated, there would generally be
29 a reversion to state or federal statutes or regulations,
30 whichever was most pertinent. If there was a problem of

D.W. Norton
Cross-Exam by Bayly

1 jurisdiction as there was indeed over the matter of
2 the sovereignty and the regulatory control of the bottoms
3 of navigable streams as they affected fish habitats.
4 The Federal Government said that it was their responsi-
5 bility. The State Government said, we understand it's
6 our responsibility. They agreed that they would not
7 fight about it. They would exercise joint responsibility
8 between the two pipeline offices. So there was a kind
9 of a variety of solutions here.

10
11 Q Now, we have had some
12 discussion this afternoon in your cross-examination by
13 Mr. Veale with regard to the snow road from which the
14 fuel line was built to serve as pumping stations. Now,
15 I gather there were some real problems with the road.
16 One of these was that the maintenance costs were
17 extremely high and I gather part of that was because
18 the Alaska constructors were out to prove that the road
19 wouldn't work?
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D. W. Norton
Cross-Exam by Bayly

1 A That's my impression.

2 Q I understand too, that
3 a large number of men and machines were used on the
4 road, whether they were actually required or not to
5 keep the road in a travelable condition?

6 A Yes, what is travelable
7 to -- somebody familiar with the Arctic may not be
8 travelable to somebody who's not familiar with Arctic
9 conditions. For example, I've been told and shown
10 many examples of ice roads or ice bridges over which
11 reportedly, drivers would refuse to drive because it
12 was an ice surface and not a gravel surface and that
13 the driver would be much more comfortable if there
14 were a thin vanier of gravel, however thin, in the
15 instance of the snow workpad in federal land, the
16 authorized officers field representative gave approval
17 for sanding of the snow road, ostensibly for traction.
18 This resulted in places where gravel of depths -- that
19 is gravel, not sand, of depths up to 12 inches were
20 put down for traction, obviating of course, the whole
21 point of the snow road in the first place.

22 Q Now, we understand that
23 when the road melted, it revealed serious terrain
24 damage, some of this I take it, would be related to
25 the using of a large amount of gravel as opposed to
26 snow or in addition to snow?

27 A Yes.

28 Q Now, was there damage
29 apart from that to your knowledge, of other sorts?

30 A As far as I know the

D. W. Norton
Cross-Exam by Bayly

1 other principle source of damage would have been from
2 untended spoil piles, disposal actions which had not
3 been remedied before spring breakup.

4 Q Now, one section in
5 particular, we were informed of approximately three
6 miles in length, had -- had no traffic on it, except
7 for that involved in building it, but still the
8 ground showed subsidence affects, when the snow had
9 melted, are you aware of that section?

10 A Only generally. I've
11 not seen it.

12 Q Okay. Now, in the --
13 back to the question of inhouse surveillance, I under-
14 stand that in addition to inhouse surveillance, some
15 of the monitoring of the operation were done by
16 members of the same union as the workers belong to,
17 I refer specifically to the welding which I understand
18 was monitored/^{or}inspected by former welders from the
19 798 Local of the Pipefitters, is that something you're
20 acquainted with?

21 A No, I'm not.

22 Q Okay. Now, you referred
23 to the drafting of permits as something that perhaps
24 someone other than biologists or engineers should be
25 involved in. Do you have any opinion as to whether
26 it would be of assistance to field inspectors or
27 office inspectors to have access to legal counsel in
28 the Department of Justice or in the various government
29 departments in charge of -- in charge with enforcement,
30 so that they could determine whether they had something

D. W. Norton
Cross-Exam by Bayly

1 which should be processed or could be processed
2 through the courts?

3 A You mean an action at
4 law?

5 Q Yes.

6 A Oh, very definitely.
7 I think legal advice, legal counsel can save you a
8 lot of difficulty, it can keep you out of court if
9 it's honest.

10 Q Should the surveillance
11 or monitoring agency in your opinion, or agencies,
12 have their own staff counsel to help them out with
13 some of these problems and to help out with sorting
14 out some of the legislative conflicts or potential
15 problems? Go ahead.

16 A In general they should
17 have legal advice available whether it should be in-
18 house staff, there are two opinions on this. Within
19 the State of Alaska, it's been argued for many years
20 whether outside of the one Attorney General's office
21 there should be legal staff for example, the Depart-
22 ment of Fish and Game, and the view taken by all of
23 the four governors in the State, is that, no it should
24 not be -- legal counsel should not be assigned to a
25 particular arm of the state or particular agency,
26 because the Attorney General's office exists there for
27 all services, no special interest. I can only present
28 the argument, I don't know the other side of the
29 issue very well.

30 Q All right. Did you feel

D. W. Norton
Cross-Exam by Bayly

1 that in JFWAT you had adequate access to this
2 kind of assistance when you needed it?

3 A In theory, we did. In
4 practice, our legal experts in the Attorney General's
5 office were very much subject to backlog problems.

6 Q Now, can you tell me
7 did you face problems in training your enforcement
8 personnel or in the enforcement personnel getting to
9 know each other as well as their opposite numbers in
10 industry?

11 A Yes, but they were
12 fortunately really minor problems. I think I've
13 stated here, that we found it fortunately possible to
14 obtain some excellent biological talent, people with
15 extremely good judgment, people with advanced degrees.
16 It was a buyer's market in 1974, the graduate educa-
17 tion business or the market possibilities for people
18 who had been highly trained in biology, gave us first
19 crack. We were able to offer competitive or better
20 than competitive salaries in JFWAT and they needed a
21 minimum of training. I mean, they trained me, more
22 than I did them and they were trained in turn by
23 engineers. It was on the job procedures. I'm not
24 suggesting that this would always work, but, I think
25 going after the best talent that can be found is
26 going to solve a lot of the problem, making sure that
27 you know enough to trust the guys judgment in the
28 field, to make sure that he isn't stamping on ants
29 while the elephants go over the hill and we were very
30 satisfied with just -- it's hardly worth mentioning

D. W. Norton
Cross-Exam by Bayly

1 exceptions where mistakes were made in the field.

2 Q Do you think that you
3 had enough enforcement training, that is, policeman-
4 like training if you like in gathering the information
5 you needed to present either to the company or to the
6 contractor or to the state Attorney General's Depart-
7 ment if it came to that, the information required to
8 show that you had a point or a case that was strong?
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D.W. Norton
Cross-Exam by Bayly

1 A They had enough by oh,
2 a year into the process, but it was on the job training
3 also that the rules of train of evidence, the rules of
4 seizure of evidence, this kind of thing, the technical
5 matters of how you take samples to come as close as
6 possible to ensuring that you've got an answer that
7 will stand up in an action at law, we learned those over
8 the process of months.

9 Q Is there something you'd
10 recommend that people in a Canadian agency or a pipeline
11 surveillance team be given instruction prior to going
12 on the job?

13 A Yes, to the extent possible.

14 Q And what about construction
15 training? I don't mean that you necessarily have to
16 learn how to operate a machine, but were you given as
17 members of the JFWAT team instruction in what the
18 constructional techniques were that you were going to
19 see, what rates of construction you were likely to
20 anticipate?

21 A No, we weren't.

22 Q Do you feel you suffered
23 from that lack of knowledge at the beginning?

24 A Yes, very definitely.

25 Q And this was another of
26 the things that you had to catch up on. How long did that
27 take on the job?

28 A It's still going on.

29 I don't know whether or just how that experience with
30 high speed construction could have been gained by

D.W. Norton
Cross-Exam by Bayly

1 biologists other than on the job. Now it might be
2 possible. We might have an institute of former
3 JFWA tters, for example, to be available in schooling
4 the next generation; but in part it could have been
5 solved, I think, with better partnership with industry.
6 If they had films, if they had been able to take the
7 time to say, "Look, you know, this is what it sounds
8 like, this is what it feels like, this is what diesel
9 oil going through cats at the rate of so many thousand
10 gallons per construction spread is really all about,
11 and here are some of the things that motivate us.
12 We don't want an idle man-hour if possible, more than
13 at a two or 3% level. Here are the things which really
14 constrain us. Here are examples of how we have to
15 deploy manpower on this end and we have to have a
16 range, speedy transition to get that manpower at another
17 part of a construction spread or a work element."

18 Those were the kinds of
19 decisions that were all new to us, as fish and wildlife
20 biologists.

21 Q As fish and wildlife
22 biologists, did you have an opportunity to use your
23 own specialty, or did you become biologists in a
24 general sense in your surveillance work? In other words,
25 would a fishery man develop into a mammalogist, if
26 you like?

27 A Well, we tried to pair
28 off our surveillance people by whether they were
29 terrestrial on one hand, aquatic on the other. We tried
30 to alternate wildlife with fisheries biologists and

D.W. Norton
Cross-Exam by Bayly

1 we had pretty much of a 50-50 mix, and most definitely
2 people within JFWAT had a chance to exercise their
3 specialty. For example, one person comes to mind who
4 was hired from graduate school. We wouldn't even
5 let him write his thesis because he was so desperately
6 needed in a certain section where his graduate work
7 involved spawning biology of whitefish. It was the
8 most critical element in the whole section of construc-
9 tion near Fairbanks, and he was the expert. Nobody,
10 including his professors in school, knew more about
11 that topic than he did, and he instructed the rest
12 of the team members on it, and it was very good to
13 have the flexibility to deploy him where he knew the
14 country the best.

15 Q Now, in the Alyeska situa-
16 tion is it true that Alyeska is responsible legally for
17 the actions of its contractors? And that you must
18 go after Alyeska prior to going after the contractor,
19 or in conjunction in going after them?

20 A That is correct.

21 Q And did you find that
22 that was an impediment in surveillance, or was it an
23 advantage to have that leverage against the company?

24 A On balance I would say
25 it didn't work as well as it should have, because what
26 it means is A tells B, B tells C what should or should
27 not be done, and it's not as good as A telling C,
28 "I'm not going to tell you exactly how to do it, but
29 this is what I want the final product to look like.
30 Do you understand? If not, I'll explain it some more

D.W. Norton
Cross-Exam by Bayly

1 and see what your solutions are."

2 There was always at least
3 one middleman in theory and it got downright frustrating.

4 Q Now, in the early part
5 of Mr. Veale's cross-examination, you discussed the
6 western ARctic caribou herd, and the problems with
7 the decline appear to include not being able to
8 attribute decline to any cause, and therefore not
9 being able to shut off that cause. Was this because
10 of a lack in baseline data, or an inability to know what
11 was going on in the various areas of the field?

12 A If I were to say it's a
13 lack in baseline data, which I probably would, that's
14 an article of faith. If you have all the baseline data
15 that you need, presumably you know what's going on.
16 You face the problem in an underdeveloped area or an
17 underfinanced, understudied area, that you won't have
18 the resources to get at some of these answers most
19 likely until you have the kind of large-scale development
20 of a pipeline, and that's the problem you're in. Now
21 we don't know how ignorant we are until in fact there
22 is an insult such as a pipeline or the construction of
23 it. Now probably we're getting smart enough to ask the
24 questions we should have asked in 1970 collectively, not
25 just biologists, but everybody.

26 Q Do you feel that's a process
27 that we have to go through in the example of the
28 Porcupine caribou herd?

29 A I hope not.

30 Q It's an expensive lesson.

D.W. Norton
Cross-Exam by Bayly

1 A It may an unacceptably
2 expensive lesson.

3 THE COMMISSIONER: Pardon me?

4 A An unacceptably
5 expensive lesson.

6 MR. BAYLY: Q Now, is it a
7 question of being able to do accurate surveys that
8 allows you to attribute decline to various causes?

9 A In part. It also seems
10 to be in part the congenital problem of government re-
11 acting rather than anticipating, or even if they want
12 to anticipate, where do the funds come from? I haven't
13 seen a system yet that gets very far ahead of
14 problems. They're generally reacted to rather than
15 anticipated and studied to the point that real answers
16 can be generated.

17 Q Would it be fair to say
18 then that the only way to at least not influence a
19 decline is to -- or any fluctuation in population --
20 is to avoid?

1 A That's probably the
2 only sure way that we have.

3 Q As a result of legislation
4 for the control of the molesting of bears, some people
5 went to jail. Was that a result of new legislation
6 that was introduced?

7 A Not of molesting but of
8 feeding, creating an attractive nuisance.

9 Q Was that because new
10 legislation was introduced?

11 A I'm not absolutely
12 certain that new legislation was introduced in the
13 form of say a bill. It may have been amplification
14 of existing legislation in terms of regulation. I'm
15 sorry, I don't know the very specifics of that point.

16 Q And has it been at all
17 effective?

18 A From what little I
19 know, it has been effective but not completely
20 effective.

21 Q But it does act as
22 some sort of a deterrent anyway? It's cut down the
23 incidents?

24 A Yes.

25 Q In the Alaska situation,
26 what, if any, input or control did native corporations
27 or native groups have in the surveillance or monitoring
28 of the pipeline or the ancillary facilities?

29 A Very little influence
30 in the surveillance that I am aware of. In part,

1 because the lands at issue here were not part of native
2 selected lands under the Alaska Native Land Claims
3 Settlement Act of 1971, which settlement act, of course,
4 was catalyzed by the pipeline itself.

5 Q Now, we've heard
6 occasionally that industry in Alaska had an environ-
7 mental education program for its workers. Can you tell
8 us whether this was a program that taught people very
9 much and can you tell me what recommendations you
10 would have to beef up one if it wasn't adequate?

11 THE COMMISSIONER: I thought
12 you just told us about that awhile ago.

13 A Yes, I think we covered
14 the point. I was not impressed with its effectiveness.

15 MR. BAYLY: Yes. Would you
16 recommend that a course be given either by government
17 or somebody else that could be effective or are we
18 dealing with really a waste of dollars to try and
19 educate construction workers environmentally?

20 A No, I don't think it's
21 a waste of dollars. It's the experience that informal
22 sessions that JFWAT put together were very well
23 attended. There's interest and particularly there's
24 interest among people who've gotten their feet muddy
25 and they've seen that there are special regional
26 problems.

27 MR. BAYLY: Those are all the
28 questions I have. Thank you very much. I have this
29 report which I'll give to Miss Hutchinson.

30 MR. SCOTT: Thank you, Mr.

D. W. Norton
Cross-Exam by Hollingworth

1 Bayly. Mr. Hollingworth?

2 CROSS-EXAMINATION BY MR. HOLLINGWORTH:

3 Q Mr. Norton, as I
4 understand your presentation, you assume an almost
5 constant presence of someone from JFWAT at the site
6 in question when something that could affect the
7 environment is going on. Is that a fair statement?

8 A I assume it as a fact
9 or as desirable?

10 Q Well, was that in fact
11 happening? Let's put it that way.

12 A Yes, basically there
13 was pretty steady coverage.

14 Q And you regard that as
15 desirable?

16 A Yes.

17 Q And also you had people
18 with fairly restricted expertise and I could say they're
19 specialists.

20 A Yes.

21 Q What sort of
22 representation did Alyeska have or does Alyeska have
23 on the other side? Do they have a similar specialist
24 who is on a one to one basis with your specialists so
25 that there's a proper communication between the two
26 or is there a field engineer who talks with your man?
27 Who exactly does Alyeska put forth?

28 A Alyeska, as I understand
29 it, has had approximately six biologists more or less
30 full time in various roles. Beyond that, they have, I've

D. W. Norton
Cross-Exam by Hollingworth

1 been told, a fairly large staff that they could say
2 is in response to the presence of JFWAT and SPCO and
3 APO. It's not a mere image by any means.

4 Q Well, if by chance JFWAT
5 had people representing three distinct specialties
6 at a given site, would Alyeska have one representative
7 to interface with them or three?

8 A I think in practice that
9 depended on the level of apparent seriousness of a
10 problem. It might be simply the residence site
11 engineer who after all is supposed to be able to
12 understand to a certain level the concerns of biologists,
13 hydrologists, and in many cases that was quite adequate.

14 If a problem became say one
15 notch more serious, Alyeska might send a shock troop
16 who was specifically a fisheries biologist to respond
17 to a hydrologic engineering fisheries problem.

18 Q What, in your view, is
19 the most expeditious way from Alyeska's point of view
20 to handle such interface? To have that specialist
21 on the scene from the outset?

22 A I'm not sure. I'm
23 sorry here. I confused personalities with institutions
24 and about half of the Alyeska effort I would say was
25 not only zero level, it was negative level.
26 Institutionally, I can see reasons for Alyeska having
27 such specialists. On the other hand, if they are
28 bought by Alyeska corporate mentality as opposed to
29 what the facts argue on their own, they should be
30 encouraged to seek employment elsewhere.

D.W. Norton

C ross-Exam by Hollingworth

Q I'm not sure if this is something you went into or not. Did your specialists-- and let's say biologists for a start -- did they receive any primer, if you like, in engineering or pipeline building on a par with the primer that construction workers receive in biology and environmental concerns?

A It certainly was not in the same form. Yes, they did receive primer education in-house in JFWAT, particularly once we got started. A new person coming to the staff would be told, you know, "whatever you thought about this thing, this is the way it really is," but there was no corresponding obligation on the part of Alyeska to take any of our people and say, "This is construction, this is finance, and this is etc."

There was no engineering briefing.

Q Do you think that more briefing than you undertook would be a good idea?

A Yes.

Q What sort of level would you recommend?

A Something corresponding to a very good environmental briefing not done in one day, but done over the space of a couple of weeks.

Q On a sort of a university level?

A Sure, educated laymen.

Q Now you speak of the problems you sometimes had where people were playing

D.W. Norton
Cross-Exam by Hollingworth

1 contradictory roles, and I'm referring you to page
2 20959 of your evidence. I don't think it really matters
3 if you look at it; but the contradictory roles were
4 protection of the environment through guaranteeing
5 integrity of the pipeline, and also making sure the
6 pipeline was completed on schedule, and this has been
7 touched ^{on} /in your cross-examination earlier in the day.

8 In the event of such a conflict
9 was the conflict decided in the field by your people,
10 or was it generally or exclusively decided at a higher
11 level in JFWAT?

12 A Well, I believe there
13 may be a problem of context here. I meant to point out
14 in testimony that JFWAT never had that problem.

15 Q I'm sorry, APO.

16 A Within APO, I would
17 have to guess at the answer, but it was solved very
18 high, not in the field.

19 Q So you don't know, really.

20 A That's right, and I'm aw-
21 are of unhappiness within either the APO or the SPCO
22 as to how decisions between that tug-of-war were
23 arrived at.

24 MR. HOLLINGWORTH: O.K., fine.
25 Those are all the questions I have.

26 MR. SCOTT: Mr. Ziskrout?

27 MR. ZISKROUT: I have no
28 questions.

29 MR. SCOTT: I have no re-
30 examination, Dr. Norton. Thank you very much.

D.W. Norton

THE COMMISSIONER: Dr. Norton,
just one thing. You said that the future of the haul
road north of the Yukon is the subject of current
debate and review by the Alaska Growth Policy Council.
You said that in April. Has the future of the haul
road -- that is whether it will be a public highway --
been determined?

A No, it is still short of
crystalization, I believe.

THE COMMISSIONER: Right. Well,
thank you very much, Dr. Norton, we certainly appreciate
your coming here, as we appreciate the attendance of
so many witnesses who have come from Alaska and we want
to thank you and all of those others, and we certainly
are very much in your debt for canvassing all of these
subjects with us. So thank you, sir.

(WITNESS ASIDE)

MR. SCOTT: I suggest that we
begin at 9:30 in the morning.

THE COMMISSIONER: All right.
9:30 then.

(QUALIFICATIONS AND EVIDENCE OF M.H. ROGOL
MARKED EXHIBIT 872)

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